APPEAL NO. 120736
FILED JUNE 11, 2012

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on August 16, 2011, continued on December 12, 2011, and February 17, 2012, and the record closed on March 26, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the [date of injury], compensable injury does not include bilateral carpal tunnel syndrome (CTS) and de Quervain's syndrome, and the appellant's (claimant) impairment rating (IR) is 6%.[1]

The claimant appealed, disputing the hearing officer's extent of injury and IR determinations. The claimant's appeal also contends the hearing officer made a determination on the claimant's MMI that was contrary to the MMI stipulation the parties made at the CCH. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]; the Texas Department of Insurance, Division of Workers' Compensation (Division) selected [Dr. R] to serve as its designated doctor with regard to MMI and IR; and the claimant reached MMI on April 27, 2010, as certified by Dr. R.[2] The claimant testified at the CCH that, while packing and lifting boxes at work on the date of injury, she felt pain in both hands and wrists.

STIPULATION REFORMED

At the CCH, the parties stipulated that the "[c]laimant reached MMI on April 27, 2010, as certified by [designated doctor] [Dr. R]." We note that the hearing officer's decision and order Finding of Fact No. 1.F. incorrectly states that the "[c]laimant reached MMI on April 27, 2010, pursuant to [the designated doctor] [Dr. R's] April 27, 2010, certification." Accordingly, per the parties' stipulation, we reform Finding of Fact No. 1.F. to state that the claimant reached MMI on April 27, 2010, as certified by designated doctor Dr. R.

[1] We note an additional issue of whether the claimant reached maximum medical improvement (MMI), and if so on what date was reported out of the benefit review conference but was withdrawn by the agreement of the parties.
[2] We note that although not listed in the decision and order, the parties additionally stipulated that Dr. R was also asked to determine the claimant's extent of injury.

The claimant contends in her appeal that the hearing officer made an MMI determination contrary to the parties' stipulation. We disagree. The hearing officer made no conclusion of law or decision regarding the date of MMI.

EXTENT OF INJURY

The hearing officer's determination that the [date of injury], compensable injury does not include bilateral CTS and de Quervain's syndrome is supported by sufficient evidence and therefore affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The evidence reflects that Dr. R initially examined the claimant on April 27, 2010, to determine MMI/IR. In his report dated that same day, Dr. R diagnosed the claimant with "[c]hronic sprain/strain both wrists; [s]tatus post left carpal tunnel release; [s]tatus post first dorsal compartment release left wrist." Dr. R noted the following in his report:

> It is my impression that the diagnosis was chronic sprain/strain of both wrists. In examining the examinee, her main complaints were pain. I did not find any evidence of [CTS] or [d]e Quervain's tenosynovitis . . . . In light of that, she has reached [MMI].

Dr. R certified the claimant reached clinical MMI on April 27, 2010, and assessed a 15% IR based on loss of range of motion (ROM) measurements taken of the claimant's left and right wrists.

The evidence reflects that Dr. R re-examined the claimant on November 3, 2011. Dr. R determined the claimant reached clinical MMI on April 27, 2010, and assessed a 6% IR based on loss of ROM measurements taken on November 3, 2011, of the claimant's left and right wrists and combined with a 0% impairment assessed based on a neurological examination for strength and sensation.

In evidence is a letter of clarification (LOC) to Dr. R dated December 13, 2011, notifying him that the parties have agreed the MMI date is April 27, 2010, and asking him to clarify whether his 6% IR was based on the claimant's condition as of the April 27, 2010, date of MMI. In his response, Dr. R stated the 6% IR was not based on the claimant's condition as of April 27, 2010, but rather it was based on measurements obtained in the November 3, 2011, re-examination.

Also in evidence is a LOC to Dr. R dated January 9, 2012, noting that Dr. R's April 27, 2010, ROM findings did not seem consistent with other records, and asked him to explain why the 15% IR based on ROM for bilateral wrists is consistent with all the medical records and examination. In his response Dr. R stated the January 9, 2012, LOC relates to his original April 27, 2010, evaluation. Dr. R noted he had examined the claimant on two additional occasions and that the opinions noted back in 2009 had no bearing on the claimant's IR at the time of Dr. R's last examination occurring on November 3, 2011. Dr. R also noted that the claimant's ROM had "markedly improved in her wrist" at the time of the November 3, 2011, examination. Dr. R further stated ". . . I really have no way of assigning a valid [IR] other than to use the values determined as of my examination of November 3, 2011. Therefore, I am going to change my date of [MMI] to that date." Dr. R included an amended Report of Medical Evaluation (DWC-69), certifying the claimant reached clinical MMI on November 3, 2011, and assigned a 6% IR. Dr. R's amended DWC-69 contained a certification date of December 1, 2012.

The hearing officer determined the claimant's IR is 6% per Dr. R's amended certification. In the Background Information of her decision, the hearing officer notes:

> In response to a subsequent [LOC] [Dr. R] opined that the 6% IR was not based upon the [claimant's] condition as of April 27, 2010, but was based upon the re-examination on November 3, 2011, and then [Dr. R] submitted an amended DWC-69 with his signature and dated it '12-1-12.' [Dr. R's] '12-1-12' amended certification of MMI was amended on an incorrect date and without performing a physical examination.[3] He then amended the DWC-69 to reflect an MMI date of November 3, 2011. This is in direct conflict with prior appeal decisions. In [Appeals Panel Decision (APD)] 101902, decided February 14, 2011, the Appeals Panel cited [APD] 100766, decided August 16, 2010, wherein it noted than an amended certification of MMI without a medical examination is a violation of Rule 130.1(b)(4)(B) which requires the certifying doctor to perform a complete

[3] Although the hearing officer discusses a "12-1-12" amended certification of MMI, the evidence does not contain a DWC-69 with a "12-1-12" date of MMI. Rather, in evidence is a DWC-69 from Dr. R with a date of exam of November 3, 2011, with a clinical MMI date of November 3, 2011, and a date of certification of December 1, 2012.

> medical examination of the [claimant] for the explicit purpose of determining MMI. The Appeals Panel stated that the designated doctor's amended certification of MMI/IR could not be adopted because it was amended without an examination in violation of Rule 130.1(b)(4)(B) and the only valid and adoptable certification from the designated doctor was the one that had been done after a physical examination.

The hearing officer's reliance on APDs 101902 and 100766, *supra*, is misplaced. In APD 101902, the designated doctor initially certified a date of MMI and assigned an IR based on his examination. In that case there was a peer review report dated after the designated doctor's certifying examination disagreeing with the designated doctor's assigned IR. The peer review report was sent to the designated doctor in an LOC. In response to the LOC the designated doctor, without physically re-examining the claimant, elected to modify his MMI/IR certification due to findings made by a required medical examination doctor prior to the designated doctor's certifying examination, and the lack of any medical records to support active treatment beyond that date of the modified MMI. In APD 100766, the designated doctor based his original MMI/IR certification on the only date he physically examined the claimant; however, the designated doctor subsequently amended his MMI certification without physically re-examining the claimant in violation of Rule 130.1(b)(4)(B).

In contrast in the case on appeal, Dr. R initially examined the claimant on April 27, 2010, and certified she reached clinical MMI on that date with a 15% IR. Dr. R re-examined the claimant on November 3, 2011, and certified the claimant reached clinical MMI on April 27, 2010, and assigned a 6% IR. However, the evidence established that Dr. R's 6% IR was not based on the claimant's condition and ROM measurements obtained by Dr. R on April 27, 2010; rather, the 6% IR was based on the November 3, 2011, re-examination and loss of ROM measurements obtained on that date. Unlike APDs 101902 and 100766, *supra*, this is not a case in which the designated doctor amended an MMI/IR certification without a medical examination. Dr. R based the 6% IR on the November 3, 2011, re-examination, and in response to a LOC he amended his MMI/IR certification to reflect an MMI date of November 3, 2011. We find the instant case distinguishable from the APDs cited *supra*. *See also* APD 100152, decided April 8, 2010.

However, as previously mentioned, the parties stipulated the MMI date is April 27, 2010. As Rule 130.1(c)(3) provides an assignment of IR shall be based on the claimant's condition as of the MMI date, Dr. R's 6% IR containing the November 3, 2011, MMI date cannot be adopted. We therefore reverse the hearing officer's determination that the claimant's IR is 6%.

There are two MMI/IR certifications in evidence with an IR based on the stipulated MMI date of April 27, 2010, and both are from Dr. R. In the first, as previously mentioned, Dr. R re-examined the claimant on November 3, 2011, and certified the claimant reached MMI on April 27, 2010, with a 6% IR. The evidence established that Dr. R based his 6% IR on the examination conducted on and ROM measurements obtained on November 3, 2011, and not on the claimant's condition on April 27, 2010. Because Dr. R's 6% IR is not based on the claimant's condition on April 27, 2010, the stipulated date of MMI, Dr. R's assigned 6% IR cannot be adopted.

The other certification in evidence from Dr. R is his original April 27, 2010, certification and 15% IR. In his narrative report dated April 27, 2010, Dr. R noted that he "did not find any evidence of [CTS] or [d]e Quervain's tenosynovitis." Dr. R assessed a 15% impairment based on a diagnosis of chronic sprain/strain of both wrists and ROM measurements taken of the claimant's bilateral wrists on April 27, 2010. We hold that Dr. R's 15% IR is supported by a preponderance of the evidence. Accordingly, we render a new decision that the claimant's IR is 15%.

SUMMARY

We affirm the hearing officer's determination that the [date of injury], compensable injury does not include bilateral CTS and de Quervain's syndrome.

We reverse the hearing officer's decision that the claimant's IR is 6% and render a new decision that the claimant's IR is 15%.

The true corporate name of the insurance carrier is **SENTRY INSURANCE A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Carisa Space-Beam
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge