APPEAL NO. 121029
FILED JULY 19, 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 was held on May 8, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the two disputed issues before him by deciding that: (1) the respondent (claimant) reached maximum medical improvement (MMI) on April 19, 2010; and (2) the claimant's impairment rating (IR) is 10%. The appellant (self-insured) appeals the hearing officer's determinations. The claimant responded, urging affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the compensable injury includes a cervical sprain/strain, a lumbar sprain/strain, a hip contusion, and a jaw/face contusion. We note that the decision and order omits jaw from the stipulation. Although not listed in the decision and order, the parties additionally stipulated that the claimant's treating doctor is [Dr. J], and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. M], as the designated doctor for purposes of MMI and IR.

The claimant testified that he was injured at work on [date of injury], when he was assaulted by an inmate.

The hearing officer found that the preponderance of the evidence is contrary to Dr. M's certification of MMI on September 15, 2009, and that the preponderance of the evidence is consistent with Dr. J's certification of MMI on April 19, 2010, with a 10% IR. The hearing officer therefore determined the claimant reached MMI on April 19, 2010, with a 10% IR. The self-insured contends in its appeal that Dr. J's MMI/IR certification cannot be adopted because Dr. J rated conditions unrelated to the stipulated compensable injury conditions.

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. 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.

Dr. J examined the claimant on April 19, 2010, and determined the claimant reached clinical MMI on that date with a 10% IR. In his narrative letter dated April 19, 2010, Dr. J stated the claimant "is found to be at MMI with the diagnoses of: (1) [c]ervicalgia; (2) [c]ervical radiculitis; (3) [l]ow back pain; (4) [s]ciatica; [and] (5) [c]ontusion, right hip with thigh."

As previously mentioned, the parties stipulated that the compensable injury includes a cervical sprain/strain, a lumbar sprain/strain, a hip contusion, and a jaw/face contusion. Dr. J's April 19, 2010, MMI/IR certification does not address all of the stipulated compensable injury conditions; Dr. J did not evaluate and assess an impairment for the claimant's cervical sprain/strain, lumbar sprain/strain, and jaw/face contusion. As such, his MMI/IR certification cannot be adopted. We therefore reverse the hearing officer's determination that the claimant reached MMI on April 19, 2010, with a 10% IR. *See* Appeals Panel Decision (APD) 111825, decided January 26, 2012.

The only other MMI/IR certification in evidence is that of Dr. M, the designated doctor. Dr. M examined the claimant on September 15, 2009. In his narrative report dated that same date, Dr. M lists the following diagnoses: (1) [c]ervical strain; (2) [l]umbar strain; and (3) [h]ip contusion. Using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), Dr. M based the 0% IR on the following: 0% under Diagnosis-Related Estimate Category 1: Complaints or Symptoms for the cervical and lumbar regions; and 0% for the hip. Dr. M invalidated range of motion testing on the claimant's hip due to positive Waddell signs and inconsistent effort.

Although Dr. M considers and rates the claimant's cervical sprain/strain, lumbar sprain/strain, and hip contusion, Dr. M does not analyze or assess an impairment for a jaw/face contusion, one of the stipulated compensable conditions. Because Dr. M's September 15, 2009, MMI/IR certification does not consider the entire compensable injury as stipulated to by the parties, his certification cannot be adopted. The hearing officer's finding that the preponderance of the evidence is contrary to Dr. M's September 15, 2009, certification of MMI is supported by sufficient evidence.

Given that we have reversed the hearing officer's determination that the claimant reached MMI on April 19, 2010, with a 10% IR, and that there are no other certifications of MMI/IR in evidence that we can adopt, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. M is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. M is still qualified and available to be the designated doctor, and if so, advise the designated doctor that the compensable injury includes a cervical sprain/strain, a lumbar sprain/strain, a hip contusion, and a jaw/face contusion, as stipulated by the parties. All medical records are to be sent to the designated doctor, including records from the PRIDE program that the claimant participated in after the designated doctor examination. The designated doctor is to be requested to give an opinion on the claimant's MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination. The parties are to be provided with the hearing officer's letter to the designated doctor and the designated doctor's response, and allowed an opportunity to respond.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

JONATHAN D. BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

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STATE OFFICE OF RISK MANAGEMENT
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Carisa Space-Beam
Appeals Judge

CONCUR:

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Cynthia A. Brown
Appeals Judge

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Margaret L. Turner
Appeals Judge