

APPEAL NO. 121042
FILED JULY 26, 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 3, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to cervical disc displacement/herniated discs at C5-6 and C6-7 and cervical radiculopathy but does not extend to cervical disc displacement/herniated disc at C4-5, foraminal stenosis at C4-5 and C5-6, and cervical spondylosis at C5-6 and C6-7; (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from [Dr. K] on June 27, 2011, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the date of MMI is June 27, 2011; (4) the respondent's (claimant) IR is 15%; (5) the appellant (carrier) did not waive its right to contest the claimant's entitlement to supplemental income benefits (SIBs) by failing to timely request a benefit review conference (BRC); and (6) the claimant is not entitled to SIBs for the first quarter, January 24 through April 23, 2012 (as reformed by the parties' stipulation). The carrier appealed the hearing officer's determination of the MMI date, contending that the date of MMI actually determined by the designated doctor was March 14, 2011. The carrier additionally appealed the hearing officer's determination that the claimant's IR is 15%. The claimant responded, noting that the hearing officer did err in his finding of the clinical MMI date since the designated doctor actually certified MMI on March 14, 2011. The claimant urged affirmance of the IR of 15%.

The hearing officer's determinations that: (1) the compensable injury of [date of injury], extends to cervical disc displacement/herniated discs at C5-6 and C6-7 and cervical radiculopathy but does not extend to cervical disc displacement/herniated disc at C4-5, foraminal stenosis at C4-5 and C5-6, and cervical spondylosis at C5-6 and C6-7; (2) the first certification of MMI and assigned IR from Dr. K on June 27, 2011, did not become final under Section 408.123 and Rule 130.12; (3) the carrier did not waive its right to contest the claimant's entitlement to SIBs by failing to timely request a BRC; and (4) the claimant is not entitled to SIBs for the first quarter, January 24 through April 23, 2012 (as reformed by the parties' stipulation) were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. We note that the parties stipulated that the dates of the first quarter of SIBs

began on January 24, 2012 and ended on April 23, 2012. Although the hearing officer correctly documented the stipulation in his decision and order he failed to include the correct ending date of the first quarter of SIBs in making his determination that the claimant is not entitled to SIBs for the first quarter. Additionally, the hearing officer incorrectly documented the dates of the qualifying period of the first quarter of SIBs as stipulated to by the parties. The parties stipulated that the qualifying period began on October 13, 2011, and ended on January 10, 2012. The hearing officer mistakenly identified the beginning date of the qualifying period as October 12, 2011, and incorrectly identified the ending date of the qualifying period as January 10, 2011. The hearing officer noted that the parties stipulated that the number of work searches required per week in [County 1] (the applicable county) is three (3). However, a review of the record reflects that the parties actually stipulated that the number of work searches required per week in [County 2] (the applicable county) is three (3).

The hearing officer found that “[t]he [IR] of [Dr. K] was performed in accordance with 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)], and [is] supported by a preponderance of the evidence.” That finding is supported by sufficient evidence. The claimant contended in his response that the hearing officer clearly intended to adopt the certification of the designated doctor, Dr. K, but erroneously found the designated doctor certified that the claimant reached MMI on June 27, 2011, which was the date of the certifying examination.

Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers’ Compensation (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. 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 record indicates that Dr. K examined the claimant on June 27, 2011, but certified that the claimant reached MMI on March 14, 2011, with a 15% IR. Dr. K also provided an alternative certification for a cervical strain/sprain injury only with the date of

MMI on March 14, 2011, with a 5% IR. Additional certifications were in evidence; however, as previously noted the hearing officer found that the 15% IR of Dr. K was performed in accordance with the AMA Guides and is supported by a preponderance of the evidence. That finding is supported by sufficient evidence. However, the hearing officer mistakenly found that the designated doctor certified that the claimant reached MMI on June 27, 2011, rather than March 14, 2011, the actual date he certified that the claimant reached MMI, as reflected on the Report of Medical Evaluation (DWC-69) and the designated doctor's narrative report in evidence. Consequently, the hearing officer's determination that the claimant reached MMI on June 27, 2011, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the claimant reached MMI on June 27, 2011, and render a new decision that the claimant reached MMI on March 14, 2011. We affirm the hearing officer's determination that the claimant's IR is 15%.

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

**RON O. WRIGHT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Carisa Space-Beam
Appeals Judge