APPEAL NO. 121876
FILED NOVEMBER 7, 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 15, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant's (claimant) compensable injury of [date of injury], extends to a left wrist median nerve injury and carpal tunnel syndrome (CTS); (2) the claimant has sustained disability from October 13, 2011, through at least the date of the CCH; and (3) the claimant reached maximum medical improvement (MMI) on October 12, 2011, with three percent impairment rating (IR). The claimant appealed, disputing the hearing officer's MMI and IR determinations, contending that the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, [Dr. P] failed to rate the entire compensable injury and that the claimant has not yet reached MMI as certified by [Dr. Pk], a doctor selected by the treating doctor to act in place of the treating doctor. The respondent (carrier) responded, urging affirmance of the MMI and IR determinations.

The hearing officer's determinations that the claimant's compensable injury of [date of injury], extends to a left wrist median nerve injury and CTS and that the claimant has sustained disability from October 13, 2011, through at least the date of the CCH were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

In the Background Information section of her decision, the hearing officer stated:

> [The] [c]laimant, a hydroblaster, slipped and fell on [[date of injury]], entangling his left handain a blasting hose that was simultaneously caught on a railing. The nature of the accident caused [the] [c]laimant's weight to be suspended from that wrist, and since that time [the] [c]laimant has experienced symptoms of [CTS], a median nerve injury.

In evidence is a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) which states that the carrier accepts a left wrist contusion, left wrist sprain/strain, and a bone contusion of the left scaphoid as the compensable injury. As discussed above, it has also been administratively determined that the compensable injury extends to a left wrist median nerve injury and CTS.

There are two certifications of MMI and assigned IR in evidence. One certification of MMI and IR is provided by Dr. P, the designated doctor appointed by the Division for return to work, whether disability is a direct result of the work-related injury, extent of injury, MMI and IR. The other certification of MMI and IR is from Dr. Pk, the referral doctor.

MMI AND IR

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. P, the designated doctor originally appointed[1] for return to work, direct result, and extent of injury, initially examined the claimant on July 13, 2011. In his narrative report, Dr. P stated that the compensable areas of the body were the claimant's left shoulder and the left hand/forearm. In his medical opinion, Dr. P stated that the claimant had "an obvious median nerve injury by EMG/NCV and by examination. The shoulder is unaffected."

Dr. P subsequently examined the claimant on January 10, 2012, for purposes of return to work, MMI, and IR. Dr. P certified that the claimant reached MMI on October

[1] We note that the hearing officer stated on the record that the EES-14s in this case are a portion of Hearing Officer's Exhibit No. 3. There are two EES-14s admitted as the claimant and carrier exhibits. The hearing officer did not indicate on these exhibits that the EES-14s were also admitted as a part of Hearing Officer's Exhibit No. 3.

12, 2011, with three percent IR. Although Dr. P noted that the claimant's doctors were recommending a chronic pain management program, a steroid injection for the wrist, and surgical release, it was his opinion that "[t]he clinical condition is not likely to improve with further active medical treatment or surgical intervention-medical maintenance care only is warranted." Dr. P in this narrative report does not include the claimant's left shoulder in his analysis of MMI other than to list his clinical findings that the shoulder was nontender to palpation and the range of motion (ROM) was within normal limits.

The claimant testified that he had received treatment, which included a chronic pain management program, following the date certified by Dr. P as his MMI date. The claimant further testified that he was to receive an injection for his wrist the week of the CCH. The claimant also stated that if the injections did not relieve the pressure in his wrist and restore the feeling to his fingers and his grip strength, his doctor was recommending a carpal tunnel release.

In his narrative report attached to his Report of Medical Evaluation (DWC-69), Dr. P lists the compensable body parts as the claimant's left shoulder and left hand/forearm, but does not list any specific diagnosis for the left shoulder or left hand/forearm in his narrative report. As previously discussed, it has now been administratively determined that the compensable injury extends to a left wrist median nerve injury and CTS. In certifying an MMI date, the record does not reflect that Dr. P considered the entire compensable injury which includes a left wrist contusion, left wrist sprain/strain, a left wrist median nerve injury, left CTS, and a bone contusion of the left scaphoid.

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) provide on page 3/46:

> To evaluate impairment resulting from the effects of peripheral nerve lesions, it is necessary to determine the extent of loss of function due to (1) sensory deficits or pain (Table 11 [page 3/48]); and (2) motor deficits (Table 12 [page 3/49]). Characteristic deformities and manifestations resulting from peripheral nerve lesions, such as restricted motion, atrophy, and vasomotor, trophic, and reflex changes, have been taken into consideration in preparing the estimated impairment percents shown in this section.
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> If an impairment results strictly from a peripheral nerve lesion, the physician should not apply impairment percents from Sections 3.1f through 3.1j ([pages 3/24 through 3/45]) of this chapter [Figures 26 and 29

included], and this section [3.1k Impairment of the upper extremity (UE) Due to Peripheral Nerve Disorders (Table 16 included)], because a duplication and an unwarranted increase in the impairment percent would result.

If restricted motion cannot be attributed to a peripheral nerve lesion, the motion impairment should be evaluated according to Sections 3.1f through 3.1j and the nerve impairment according to this section [3.1k]. Then the motion impairment percent should be *combined* (Combined Values Chart [page 322]) with the peripheral nerve system impairment percent.

The AMA Guides further provide in Section 3.1k, Entrapment Neuropathy, on page 3/56:

Impairment of the hand and [UE] secondary to entrapment neuropathy may be derived by measuring the sensory and motor deficits as described in preceding parts of this section.

An alternative method is provided in Table 16 [page 3/57]. The evaluator *should not* use both methods. Impairment of the [UE] secondary to an entrapment neuropathy is estimated according to the severity of involvement of each major nerve at each entrapment site.

In Appeals Panel Decision (APD) 043155, decided January 28, 2005, the disputed issue was IR. The certifying doctor, a designated doctor, calculated the impairment for the wrist by combining an UE impairment for loss of motion with UE impairment for mild median nerve entrapment neuropathy under Table 16, page 3/57, of the AMA Guides. The hearing officer adopted the assigned IR from the designated doctor. The Appeals Panel reversed the hearing officer's IR determination and remanded the IR issue because:

Although the records indicate that the designated doctor based his assessment of impairment for the right wrist solely on the diagnosis of [CTS], the designated doctor assessed impairment for abnormal motion of the right wrist under Section 3.1h [abnormal ROM for the wrist] and then combined that rating with impairment he assessed for the right wrist under Table 16 [UE Impairment due to Entrapment Neuropathy] based on mild impairment of the median nerve of the wrist. Clarification should be sought from the designated doctor to determine whether or not the impairment for the right wrist results strictly from a peripheral nerve lesion.

In assigning an IR, Dr. P based the claimant's three percent IR only on abnormal ROM measurements of the left wrist. Dr. P's measurements as he listed them in his report result in five percent UE impairment which converts to three percent whole person IR. However, Dr. P only lists the left shoulder and left hand/forearm as compensable without a specific diagnosis. There is no discussion of what, if any, impairment is specifically assigned for a median nerve injury or CTS. There is no indication whether or not the claimant sustained a peripheral nerve lesion. Further, there was no description and explanation of specific clinical findings regarding the left shoulder related to an impairment, including zero percent IR, as required by Rule 130.1(c)(3).

We reverse the hearing officer's determination that the claimant reached MMI on October 12, 2011, with three percent IR as certified by Dr. P because Dr. P did not consider the entire compensable injury in his certification of MMI and IR. Accordingly, it is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

Dr. Pk, a referral doctor, examined the claimant on December 8, 2011. Dr. Pk listed in his narrative report attached to his DWC-69 that the claimant's diagnoses are left wrist injury and internal derangement of the left wrist and that:

After careful review of all the medical records provided, it is my opinion that [the claimant] has [not] reached [clinical MMI] as of December 8, 2011. [The claimant] is currently pending surgery on the left wrist; therefore, he cannot be placed at clinical MMI to date. Assuming he has surgery and he has a favorable outcome [the claimant's] projected MMI date would be on/about March 8, 2012.

There has been no determination that internal derangement of the left wrist is part of the compensable injury. Further, because Dr. Pk did not list the compensable injury to include a left wrist median nerve injury or CTS, he did not consider the entire compensable injury. Further, there was no description and explanation of specific clinical findings regarding the left shoulder related to an impairment, including zero percent IR, as required by Rule 130.1(c)(3). Therefore, Dr. Pk's certification of MMI and IR cannot be adopted.

Because there are no certifications of MMI and IR in evidence that rate the claimant's entire compensable injury, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. P is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. P is still qualified and available to be the designated doctor. If Dr. P is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine whether the claimant has reached MMI and, if so, what is the claimant's IR for the compensable injury of [date of injury].

We note that the hearing officer stated on the record that she was admitting as part of Hearing Officer's Exhibit No. 3 the Request for Designated Doctor (DWC-32). However, the file contains no DWC-32 admitted into evidence. On remand, the hearing officer is to include with the record the DWC-32 that she admitted into evidence.

The hearing officer is to ensure that the designated doctor is furnished with all the claimant's relevant medical records, which include, but are not limited to, the records of evaluation or treatment subsequent to the date of the last designated doctor's exam on January 10, 2012, including reports from a chronic pain management program, steroid injections, and left wrist surgery/recommendations for surgery.

The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], includes a left wrist contusion, left wrist sprain/strain, bone contusion of the left scaphoid (as accepted by the carrier) and a left wrist median nerve injury and left CTS (as administratively determined by the Division).

The hearing officer is to advise the designated doctor that Rule 130.1(c)(3) provides that the doctor assigning the IR shall: (A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury; (B) document specific laboratory or clinical findings of an impairment; (C) analyze specific clinical and laboratory findings of an impairment; and (D) compare the results of the analysis with the impairment criteria and provide the following: (i) [a] description and explanation of specific clinical findings related to each impairment, including zero percent [IR]; and (ii) [a] description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.

The designated doctor is to be requested to re-examine the claimant and to determine whether the claimant has reached MMI and, if so, assign an IR for the claimant's compensable injury of [date of injury], based on the claimant's condition as of the MMI date considering the claimant's medical record and the certifying examination. The designated doctor is to clarify whether the assigned impairment for the left wrist results strictly from a peripheral nerve lesion or if restricted motion cannot be attributed to a peripheral nerve lesion.

After the designated doctor re-examines the claimant and submits a new certification of MMI and IR, the parties are to be provided with the designated doctor's DWC-69 and narrative report. The parties are to be allowed an opportunity to respond. The hearing officer is then to make a determination on MMI and IR consistent with this decision.

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. APD 060721, decided June 12, 2006.

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

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

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge