APPEAL NO. 122177
FILED DECEMBER 10, 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 August 22, 2012, with the record closing on September 7, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer determined that: (1) the compensable injury of [date of injury], does not extend to complex regional pain syndrome (CRPS); (2) the respondent (claimant) has not reached maximum medical improvement (MMI); and (3) no impairment rating (IR) may be assigned.

The hearing officer's determination that the compensable injury of [date of injury], does not extend to CRPS has not been appealed and has become final pursuant to Section 410.169.

The appellant (carrier) appealed, contending that the designated doctor's report certifying MMI on May 23, 2011, with a zero percent IR should have been adopted. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant testified that she was working in the hospital when she slipped and fell forward on her knees on [date of injury]. The parties stipulated that the carrier accepted a right knee sprain as the compensable injury. The parties also stipulated that [Dr. T] was the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor to determine MMI and IR and that Dr. T certified that the claimant reached MMI on May 23, 2011, with a zero percent IR.

MMI

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 on 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.

The hearing officer, In the Background Information portion of her decision, commented that Dr. T "did not provide any rationale as to why the [c]laimant reached MMI on [May 23, 2011]," and that '"further material recovery from and lasting

improvement to' [the] [c]laimant's injury could reasonably be anticipated after May 23, 2011." The hearing officer further commented that the claimant received EMG testing, injections and pain management after the date of MMI certified by the designated doctor.

Dr. T, in his Report of Medical Evaluation (DWC-69) and narrative report dated July 9, 2011, gave the definition of MMI from Section 401.011(30)(A) and stated "[b]ased on the information provided and the examination findings presented" that he found an MMI date of May 23, 2011. We note that [Dr. N], a referral orthopedic surgeon who had seen the claimant several times, in a report dated May 23, 2011, stated that the claimant "has really not gotten any better with the injections." Dr. N suggested "a neurological evaluation with possible EMG's would show if there is any other type of neuromuscular injury that would account for her symptoms." Dr. N noted that the claimant's work status and IR is "[u]nchanged."

In a report dated July 28, 2011, [Dr. SN], the treating doctor, commented that Dr. N had stated that the claimant was dealing with CRPS secondary to the work-related injury and that the claimant was in the process of getting set up for comprehensive chronic pain management program. In another report dated March 9, 2012, Dr. SN commented that Dr. N had diagnosed the claimant with CRPS type I and that he has "set [the claimant] up for a comprehensive chronic pain [management] program" and that the claimant "is not at [MMI] until she completes the chronic pain [management] program." Dr. N and Dr. SN clearly link the claimant's need for additional treatment in the form of a chronic pain management program to CRPS, a condition which the hearing officer found to be non-compensable in an unappealed determination.

The hearing officer's determination that the claimant has not reached MMI is against the great weight and preponderance of the evidence because the need for additional treatment which would result in "further material recovery from and lasting improvement" is for a condition which the hearing officer found to be non-compensable.

In contrast, Dr. T's certification that the claimant reached MMI for the compensable injury of a right knee strain is not contrary to the preponderance of the other medical evidence. We reverse the hearing officer's determination that the claimant has not reached MMI and render a new decision that the claimant reached MMI on May 23, 2011, as certified by Dr. T, the designated doctor and that his opinion is not contrary to the preponderance of the other medical evidence.

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.

Because we have reversed the hearing officer's determination that the claimant has not reached MMI and rendered a new decision that the claimant reached MMI on May 23, 2011, we must also consider whether there is an IR that can be adopted.

Dr. T is the designated doctor appointed to opine on MMI and IR. Dr. T examined the claimant on July 9, 2011, and in a DWC-69 and narrative report dated that same day, certified MMI on May 23, 2011 (a date we have rendered the claimant reached MMI) and assessed a zero percent IR based on zero percent impairment of the right knee range of motion (ROM) "due to submaximal effort given during testing." With regard to the knee ROM testing, Dr. T noted "[o]bserved greater motion then measured. Malingering signs present with submaximal effort." The parties stipulated that the carrier accepted a right knee sprain as the compensable injury. We perceive no error in Dr. T's rating of the compensable injury. We reverse the hearing officer's determination that no IR may be assigned as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We render a new decision that the claimant's IR is zero percent as assessed by the designated doctor.

OTHER MATTERS

The hearing officer, in the Background Information, commented that the claimant "credibly testified that [Dr. T] did not perform a physical examination of the [c]laimant and that all ROM testing was performed out of his presence by an assistant." The carrier, in its appeal, stated that the hearing officer's Finding of Fact Nos. 5 and 6 "implies that the designated doctor exam on [MMI] and [IR] was insufficient" because the designated doctor was not present during the examination.

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. However, 28 TEX. ADMIN. CODE § 127.200(a)(6) (Rule 127.200(a)(6)) of the new designated doctor rules provides: (a) All designated doctors shall: (6) be physically present in the same room as the injured employee for the designated doctor examination or any other healthcare service provided to the injured employee that is not referred to another health care provider under Rule 127.10(c) of this title. Rule 127.200 became effective September 1, 2012, and was not in effect at the time of Dr. T's examination of the claimant on September 14, 2011. Because the designated doctor's examination was prior to the

effective date of Rule 127.200, we decline to address how that rule may have affected the outcome of this case.

SUMMARY

We reverse the hearing officer's determination that the claimant has not reached MMI and we render a new decision that the claimant reached MMI on May 23, 2011, as certified by the designated doctor.

We reverse the hearing officer's determination that no IR may be assigned and we render a new decision that the claimant's IR is zero percent as assigned by the designated doctor.

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

CORPORATION SERVICE COMPANY
D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge