

APPEAL NO. 122208
FILED DECEMBER 20, 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 September 27, 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 right knee internal derangement, chondromalacia of tricompartment, medial synovitis, medial suprapatellar plica, left shoulder internal derangement, degenerative superior and anterior labral tears, synovitis and "bursitis and condition;" (2) the compensable injury of [date of injury], extends to left shoulder impingement syndrome and lumbar segmental joint dysfunction; (3) the appellant (claimant) reached maximum medical improvement (MMI) on January 27, 2011; (4) the claimant's impairment rating (IR) is zero percent; and (5) the claimant had disability only beginning on July 20, 2011, and continuing through the date of the CCH.

The hearing officer's determinations that the compensable injury of [date of injury], extends to left shoulder impingement syndrome and lumbar segmental joint dysfunction and that the claimant had disability only beginning on July 20, 2011, and continuing through the date of the CCH, have not been appealed and therefore have become final pursuant to Section 410.169.

The claimant appealed the extent-of-injury conditions adverse to him, the MMI date and that his IR is zero percent, contending that his compensable injury did include the adverse claimed conditions and that he is not at MMI. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed in part as reformed and reversed and rendered in part.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury at least in the form of a right knee strain/sprain and lumbar strain/sprain; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) selected designated doctor [Dr. N] was appointed to determine MMI, IR and extent of injury; (3) Dr. N certified that the claimant reached MMI on January 27, 2011, and assigned a zero percent IR; (4) the Division subsequently selected designated doctor [Dr. W] to determine MMI and IR; (5) Dr. W certified that the claimant had not reached MMI on January 17, 2012; and (6) the treating doctor referral, [Dr. R] certified that the claimant had not reached MMI on November 16, 2011.

PROCEDURAL ISSUES

The hearing officer, in Conclusion of Law No. 5 and the Decision ended the extent of injury determination stating that the compensable injury does not extend to certain conditions “. . . anterior labral tears, synovitis and bursitis and condition.” The words “and condition” are not part of the disputed issue and have no bearing on the case. We reform the hearing officer’s decision and order by striking the words “and condition” from Conclusion of Law No. 5 and the Decision portion of the hearing officer’s decision and order.

The stipulation in Finding of Fact 1.D. states that the compensable injury extends to at least a left knee strain/sprain. The recording indicates the parties stipulated that the compensable injury extended to a right knee strain/sprain. We reform the stipulation in Finding of Fact 1.D. to read that the claimant sustained a compensable injury at least in the form of a right knee sprain/strain and lumbar sprain/strain.

EXTENT OF INJURY

The hearing officer’s determination that the compensable injury of [date of injury], does not extend to right knee internal derangement, chondromalacia of tricompartment, medial synovitis, medial suprapatellar plica, left shoulder internal derangement, degenerative superior and anterior labral tears, synovitis and bursitis is supported by sufficient evidence and is affirmed as reformed.

MMI AND IR

The claimant testified that he was a door greeter for the self-insured and that on [date of injury], he stepped on a hanger, fell and injured various body parts. The compensable injury includes a right knee strain/sprain, lumbar strain/sprain (as stipulated), a left shoulder impingement syndrome, and lumbar segmental joint dysfunction as determined by the hearing officer in an unappealed determination.

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.

Dr. N, the first designated doctor, appointed to opine on MMI and IR, in a Report of Medical Evaluation (DWC-69) and narrative report dated February 25, 2011, certified MMI on January 27, 2011, with a zero percent IR. Dr. N invalidated range of motion measurements of the right and left knees and commented that “[b]ased on neuromuscular examination [the claimant] shows no objective sensory deficit and no objective motor deficit of the lumbar spine, lower extremities, or left upper extremity.” Dr. N rated a lumbar injury based on Diagnosis-Related Estimate Lumbosacral Category I: Complaints or Symptoms as zero percent. In a subsequent report dated April 29, 2011, where Dr. N was appointed to opine on extent of injury, Dr. N referenced a 2008 injury to the claimant’s left shoulder and low back, an MRI dated February 17, 2010, of the claimant’s right knee and other medical records. Dr. N opined on the extent of injury that the claimant appears to have sustained: “1. Lumbar strain. 2. Aggravation of chronic left shoulder impingement syndrome. 3. Right knee sprain with medial meniscus tear.” Regarding the left shoulder, Dr. N commented: “[h]owever, I do feel that his left shoulder, which was injured from the previous on-the-job injury in 2008 may benefit from surgical intervention so that he can regain most of his prior injury activity.” Dr. N does not mention, or specifically rate, the lumbar segmental joint dysfunction, a condition which the hearing officer determined to be part of the compensable injury in an unappealed determination. Because Dr. N failed to rate the entire compensable injury, his report certifying MMI on January 27, 2011, with a zero percent IR cannot be adopted. As subsequently discussed, another designated doctor and a referral doctor acting in place of the treating doctor have rendered opinions that the claimant is not at MMI.

The claimant had left shoulder surgery on October 12, 2011, for left shoulder internal derangement and impingement syndrome. The claimant also had right knee surgery on January 4, 2012, for internal derangement of the right knee, a condition the hearing officer found was not part of the compensable injury, and a determination which we have affirmed.

Dr. W, the second designated doctor, was appointed to opine on MMI and IR. In a DWC-69 and narrative report dated January 17, 2012, Dr. W certified that the claimant was not at MMI. Dr. W gives as his reason why the claimant is not at MMI “as [the claimant] had knee surgery just [two] weeks prior to [Dr. W’s] assessment.” Dr. W lists as his diagnoses: 1. Lumbar strain/sprain. 2. Right knee sprain/strain. 3. Right knee meniscal tear status post-meniscectomy. 4. Left shoulder impingement. 5. Left shoulder sprain/strain. 6. Left shoulder synovitis. 7. Left shoulder labral tearing. Dr. W does not list or consider lumbar segmental joint dysfunction, a condition the hearing officer found compensable and in an unappealed determination. Dr. W does list the right knee surgery and other conditions which have neither been accepted nor

administratively found compensable in finding that the claimant was not at MMI. Consequently, Dr. W's report that the claimant is not at MMI cannot be adopted.

In evidence is a report from Dr. R, a referral doctor acting in place of the treating doctor. In a DWC-69 and narrative dated November 16, 2011, Dr. R certified that the claimant was not at MMI. The reason given why the claimant was not at MMI is that the claimant "underwent a left shoulder surgery on [October 12, 2011], and is participating in post-op care, therefore, further recovery can be anticipated." The left shoulder surgery was in part for a left shoulder impingement syndrome, a condition that the hearing officer determined to be part of the compensable injury in an unappealed determination. Dr. R's report is supported by sufficient evidence and constitutes the preponderance of the medical evidence contrary to the designated doctors' reports.

Accordingly, we reverse the hearing officer's determinations that the claimant reached MMI on January 27, 2011, and that the claimant's IR is zero percent and we render a new decision that the claimant has not reached MMI and therefore, the IR issue is premature.

The true corporate name of the insurance carrier is **[a certified self-insured]** and the name and address of its registered agent for service of process is

**[CORPORATION]
[ADDRESS]
[CITY, TEXAS ZIP].**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge

