APPEAL NO. 122358
FILED JANUARY 22, 2013

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 October 10, 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 a cervical spine sprain/strain but not annular disc bulges at C5-6 and C6-7; (2) the date of maximum medical improvement (MMI) is September 6, 2011; and (3) the respondent's (claimant) impairment rating (IR) is 28%.

The appellant (carrier) appeals the hearing officer's determinations of IR and that the compensable injury extends to a cervical sprain/strain. The appeal file does not contain a response from the claimant. The hearing officer's determinations that the claimant reached MMI on September 6, 2011, and that the compensable injury does not extend to annular disc bulges at C5-6 and C6-7 were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated in part that: (1) on [date of injury], the claimant sustained a compensable injury that includes fractured teeth, a fractured jaw, and a T12-L2 back fracture with instrumentation and decompression; (2) [Dr. J] was the designated doctor appointed on the issues of MMI and IR; and (3) the date of MMI is September 6, 2011.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], extends to a cervical spine sprain/strain is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (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, the designated doctor, examined the claimant on September 6, 2011, and certified that the claimant reached MMI on that date with a 10% IR. Dr. J also provided an alternative rating of only 5% with the same MMI date for the lumbar spine. However, the 5% IR did not rate the entire compensable injury.

Dr. J noted in his narrative report of the 10% IR that the claimant had surgical history for "spinal fusion at T10-L2, oral surgery, and surgical repair of a broken jaw." Dr. J assessed a 0% impairment for the mandible 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). We note that Dr. J referred to Table 3, page 9/231 of the AMA Guides to assess impairment but Table 6 is the table on the listed page that references the relationship of dietary restrictions to permanent impairment. Dr. J assessed 5% for the cervical spine, placing the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category II: Minor Impairment. Dr. J assessed 5% for the lumbar spine, placing the claimant in DRE Lumbosacral Category II: Minor Impairment. Dr. J assessed 0% for the thoracic spine, placing the claimant in DRE Thoracolumbar Category I: Complaints or Symptoms.

Although Dr. J noted the claimant's spinal surgery and listed a fracture of the thoracolumbar spine in his diagnoses, he placed the claimant in DRE I for his thoracic injury. DRE Thoracolumbar Category I: Complaints or Symptoms is described as follows: "[t]he patient has no significant clinical findings, no documented or observed muscle guarding, no documentable neurologic impairment, no significant loss of structural integrity on lateral flexion and extension roentgenograms, and no indication of impairment related to injury of illness." It also states"[s]tructural [i]nclusions: [n]one."

The AMA Guides on page 3/99 provide that:

> Certain spine fracture patterns may lead to significant impairment and yet not demonstrate any of the findings involving the differentiators. Therefore, with the Injury Model, 'structural inclusions' are included in some of the DRE categories. If the patient has a condition that meets the definition of a category that includes a structural inclusion, the physician need not determine if the other criteria for that category are present.
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> If the patient demonstrates the structural inclusions of two categories, the physician should place the patient in the category with the higher impairment percent.

The parties stipulated that the claimant had a T12-L2 back fracture with instrumentation and decompression. The hearing officer found that the certification of 10% from Dr. J was contrary to the preponderance of the evidence and that finding is supported by sufficient evidence.

The only other certification in evidence was from the treating doctor, [Dr. S]. Dr. S examined the claimant on December 7, 2011, and certified that the claimant reached MMI on September 6, 2011 (the stipulated date) with a 28% IR. Dr. S stated in his narrative that the spinal fractures placed the claimant in Thoracolumbar DRE Category IV: Loss of Motion Segment Integrity or Multilevel Neurologic Compromise assessing 20% for the thoracic spine; 5% for the cervical spine based on Cervicothoracic DRE Category II: Minor Impairment; and 5% for the lumbar spine based on Lumbosacral DRE Category II: Minor Impairment. However, as correctly noted in the appeal by the carrier, Dr. S did not rate the entire compensable injury because he did not provide a rating for the jaw fracture or fractured teeth which were part of the compensable injury. Therefore, the IR assessed by Dr. S cannot be adopted. Accordingly, we reverse the hearing officer's determination that the IR is 28%.

Because there is no other certification which can be adopted, we remand the IR issue to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], extends to a cervical spine sprain/strain.

We reverse the hearing officer's determination that the claimant's IR is 28% and remand the IR issue to the hearing officer.

REMAND INSTRUCTIONS

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

The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], includes fractured teeth, a fractured jaw, a T12-L2 back fracture with instrumentation and decompression, and a cervical spine sprain/strain.

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 [0%] [IRs]; 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 designated doctor is to be requested to re-examine the claimant and to assign an IR for the claimant's compensable injury of [date of injury], based on the claimant's condition as of the stipulated MMI date, September 6, 2011, considering the claimant's medical record and the certifying examination.

After the designated doctor re-examines the claimant and submits a new assignment of IR (Report of Medical Evaluation (DWC-69) and narrative report), the parties are to be provided with the designated doctor's new assignment of IR. The parties are to be allowed an opportunity to respond. The hearing officer is then to make a determination on 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. *See* Appeals Panel Decision 060721, decided June 12, 2006.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

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Thomas A. Knapp
Appeals Judge