

APPEAL NO. 122377
JANUARY 14, 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 9, 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 neuroma deformities at the second and third interspaces of the right forefoot, a crush injury to the right great toe, and traumatic arthritis of the great right toe interphalangeal joint (IPJ); (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on March 11, 2011; (3) the claimant's impairment rating (IR) is two percent and (4) the claimant had disability due to her compensable [date of injury], injury from March 12 through May 31, 2011.

The claimant appealed the hearing officer's determinations of MMI and IR. The respondent/cross-appellant (self-insured) responded, urging affirmance of the MMI and IR determinations. The self-insured cross-appealed, disputing the hearing officer's determination of the extent of the compensable injury. The claimant responded, urging affirmance of the extent-of-injury determination. The hearing officer's determination that the claimant had disability due to her compensable [date of injury], injury from March 12 through May 31, 2011, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury in the form of a right great toe fracture while in the course and scope of employment with the self-insured and that [Dr. T] is the designated doctor in this case and was asked to address the issues of MMI and IR. As noted by the hearing officer in her decision and order, the evidence showed that the injury occurred as the claimant was hurriedly walking on an uneven sidewalk, and her right big toe slammed into a raised portion of the sidewalk.

EXTENT OF INJURY

The hearing officer's determination that the claimant's compensable injury extends to neuroma deformities at the second and third interspaces of the right forefoot,

a crush injury to her right great toe, and traumatic arthritis of her great right toe IPJ is supported by sufficient evidence and is affirmed.

MMI/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 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. 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. T examined the claimant on May 11, 2011, and certified that the claimant reached MMI on March 11, 2011, with a two percent IR. Dr. T noted that the compensable injury per the self-insured was a fractured right great toe and right great toe fracture is the only condition listed in his determinations/conclusions. Dr. T noted that the claimant reached MMI because the right great toe fracture was healed per x-ray on March 11, 2011. As previously noted, the hearing officer’s determination that the claimant’s compensable [date of injury], injury extends to neuroma deformities at the second and third interspaces of the right forefoot, a crush injury to her right great toe, and traumatic arthritis of the claimant’s great right toe IPJ were affirmed. Accordingly, Dr. T’s certification cannot be adopted because it did not consider the entire compensable injury. We therefore reverse the hearing officer’s determination that the claimant reached MMI on March 11, 2011, with a two percent IR. See Appeals Panel Decision (APD) 111825, decided January 26, 2012.

There is only one other certification in evidence. [Dr. S], the claimant’s treating doctor, examined the claimant on October 11, 2011, and certified that the claimant reached MMI on May 31, 2011, with a three percent IR. The only diagnosis listed in the narrative of Dr. S which accompanied his Report of Medical Evaluation (DWC-69) was

fractured right great toe. Dr. S noted that the claimant's right great toe injury was rated as three percent. Accordingly, the certification of MMI/IR from Dr. S cannot be adopted because it did not consider the entire compensable injury.

Given that we have reversed the hearing officer's determination that the claimant reached MMI on March 11, 2011, with a two percent IR, and that there are no other certifications of MMI/IR in evidence that we can adopt, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. T is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. T is still qualified and available to be the designated doctor, and if so, advise the designated doctor that the compensable injury includes neuroma deformities at the second and third interspaces of the right forefoot, a crush injury to her right great toe, and traumatic arthritis of her great right toe IPJ as well as a right great toe fracture. The designated doctor is to be requested to give an opinion on the claimant's MMI and rate the entire compensable injury 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) considering the medical record and the certifying examination. The parties are to be provided with the hearing officer's letter to the designated doctor and the designated doctor's response, and to be allowed an opportunity to respond.

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 APD 060721, decided June 12, 2006.

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

**[COUNTY JUDGE]
[ADDRESS]
[CITY, TEXAS ZIP].**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge