APPEAL NO. 122485
FILED 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 31, 2012, with the record closing on November 8, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on January 19, 2012; and (2) the claimant's impairment rating (IR) is 6%. The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that he was injured on [date of injury], while working in a lineman's bucket, when he sustained an electrical burn. The parties stipulated in part that: (1) the claimant sustained a compensable injury on [date of injury], that consisted of bilateral cubital tunnel syndrome, subluxing ulnar nerve, acute post-traumatic stress disorder (PTSD), and a sleep disorder; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appropriately appointed [Dr. S] to determine the issues of MMI and IR.

MMI

The hearing officer's determination that the claimant reached MMI on January 19, 2012, 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 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. The hearing officer found that the preponderance of the evidence is contrary to the report of the designated doctor, Dr. S. That finding is supported by sufficient evidence.

Dr. S initially examined the claimant on October 14, 2011, and certified that the claimant had not yet reached MMI but anticipated that the claimant would reach MMI on

January 14, 2012. Dr. S examined the claimant again on March 9, 2012, and certified that the claimant reached MMI on that date (March 9, 2012), with a 40% IR, 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). Dr. S listed chronic PTSD and sleep disorder secondary to trauma as the diagnoses and assessed 40% impairment stating that the claimant has ongoing dysfunction that significantly impedes useful functioning which correlates with a class 4 level of impairment using the table on page 14/301 of the AMA Guides. However, Dr. S failed to rate the bilateral cubital tunnel syndrome and subluxing ulnar nerve. The hearing officer correctly noted in the Background Information portion of her Decision that Dr. S failed to list the medical records reviewed and did not rate the entire compensable injury.

The only other certification in evidence was from the carrier required medical examination doctor, [Dr. B]. Dr. B examined the claimant on July 17, 2012, and certified that the claimant reached MMI on January 19, 2012, with a 6% IR. Dr. B noted that the bilateral cubital tunnel syndrome resolved without sequelae and that there was no evidence of subluxing ulnar nerve that persists, stating that the elbow examination is completely normal bilaterally. Dr. B noted that the subluxing ulnar nerve would be 0%. Dr. B then assessed impairment for the claimant's PTSD and sleep disorder. Dr. B assessed 3% impairment for PTSD and sleep disorder. Dr. B notes that Chapter 2 of the AMA Guides, page 9, states that up to 3% impairment can additionally be given because of the treatment that the person had to go through and the type of injury. Dr. B then states that: "[b]ilateral upper extremity neuropathy is plausible but there is essentially normal neurological examination therefore 3% impairment is given based on page 9, Chapter 2 of the AMA Guides." Dr. B combined 3% impairment for PTSD and the sleep disorder with 3% based on page 9, Chapter 2 of the AMA Guides resulting in 6% IR. The hearing officer found that Dr. B's IR was supported by a preponderance of the evidence. We disagree.

The Appeals Panel has previously addressed the use of the provision for Adjustments for Effects of Treatment or Lack of Treatment on page 2/9 of the AMA Guides in Appeals Panel Decision (APD) 090692-s, decided July 14, 2009; *see also* APD 121157, decided August 9, 2012. The AMA Guides provide in part on page 2/9, as follows:

ADJUSTMENTS FOR EFFECTS OF TREATMENT OR LACK OF TREATMENT

In certain instances, the treatment of an illness may result in apparently total remission of the patient's signs and symptoms. Examples include the treatment of

hypothyroidism with levothyroxine and the treatment of type I diabetes mellitus with insulin. Yet it is debatable as to whether the patient has regained the previous status of normal good health. In these instances, the physician may choose to increase the impairment estimate by a small percentage (eg, 1% to 3%), combining that percent with any other impairment percent by means of the Combined Values Chart (p. 322).

In some instances, as with the recipients of transplanted organs who are treated with immunity-suppressing pharmaceuticals or persons treated with anticoagulants, the pharmaceuticals themselves may lead to impairments. In such an instance, the physician should use the appropriate parts of the *Guides* to evaluate the impairment related to the pharmaceutical. If information in the *Guides* is lacking, the physician may combine an estimated impairment percent, the magnitude of which would depend on the severity of the effect, with the primary organ system impairment, by means of the Combined Values Chart.

In summary, adjustments under Section 2.2 page 2/9 of the AMA Guides provide for additional impairment in cases where: (1) treatment of an illness results in apparent remission of symptoms but the patient has not regained his prior good health; and (2) pharmaceuticals themselves may lead to impairment.

Dr. B does not specify how the claimant fits either criteria described above based on the treatment of the compensable conditions. The portion of the AMA Guides relied upon by Dr. B to assess 3% impairment for "lack of treatment" is not applicable in the claimant's circumstances. There was no evidence that the claimant was taking medication which resulted in apparent total remission of his condition. The hearing officer erred by adopting an IR that was based on a misapplication of the AMA Guides by adding an impairment of 3% using Chapter 2 of the AMA Guides for adjustments for effects of treatment or lack of treatment. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 6%. There is no other certification in evidence which can be adopted. Therefore, we remand the IR issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. S is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. S is still qualified and available to be the designated doctor. If Dr. S is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be adopted to determine MMI and IR for the compensable injury. The hearing officer is to advise the designated doctor that the claimant's IR for the current compensable injury (bilateral cubital tunnel syndrome, subluxing ulnar nerve, acute PTSD, and a sleep disorder) must be based on the claimant's condition as of the MMI date (January 19, 2012), considering the medical record, the certifying

examination, and the rating criteria of the AMA Guides. The hearing officer is to advise the designated doctor that 28 TEX. ADMIN. CODE § 130.1(c)(3) (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 hearing officer is to ensure that the designated doctor receives any medical records of the claimant that were not previously provided to the designated doctor in order for the designated doctor to address MMI and IR. The parties must be given an opportunity to respond to any amended report of the designated doctor. The hearing officer must then make a decision regarding the claimant's IR based on the evidence.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge