APPEAL NO. 122622
FEBRUARY 15, 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 November 14, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the disputed issues, the hearing officer determined that: (1) the compensable injury of [date of injury], does not extend to right carpal tunnel syndrome (CTS), right medial epicondylitis, right wrist tendinitis and right shoulder impingement syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 11, 2011; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed all three issues, contending that her compensable injury included the disputed conditions and that she has not yet reached MMI and therefore, the IR is premature. The respondent (carrier) filed a Motion Nunc Pro Tunc to correct a clerical error and otherwise urged affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The evidence reflects that the claimant is a leather tooler whose job is to use leather tools to create designs on saddles. The claimant testified that she injured her right arm, back, and neck, attempting to keep a saddle from falling off a pedestal. The parties stipulated that the claimant sustained a compensable injury on [date of injury]. A Request for Designated Doctor Examination (DWC-32) reflects that the carrier accepted as compensable, thoracic strain, right wrist sprain, right elbow sprain, and right hand sprain. The parties stipulated that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. Z] as the designated doctor on issues of MMI, IR, extent of injury, and return to work.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to right CTS, right medial epicondylitis, right wrist tendinitis and right shoulder impingement syndrome is supported by sufficient evidence and is affirmed.

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.

Dr. Z, the designated doctor appointed to opine on MMI and IR, examined the claimant on January 20, 2012, and in a Report of Medical Evaluation (DWC-69) and narrative, both dated January 20, 2012, certified that the claimant reached clinical MMI on August 1, 2011 (not August 11, 2011, as recited by the hearing officer in his Background Information, Finding of Fact No. 6, Conclusion of Law No. 4, and Decision) with a zero percent IR. In his comments, Dr. Z stated: "I would say [the claimant] has reached her MMI three months after the injury. That would be August 1, 2011. The rest of the symptoms are most likely secondary to her muscle spasms and afraid of moving and rehab." Dr. Z, in summary, again states that the claimant is assigned a whole person impairment of zero percent based on 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) and the date of MMI is August 1, 2011.

The hearing officer in Finding of Fact No. 7 found that "[Dr. Z's] impairment evaluation was carried out in accordance with the [AMA Guides]" and in Finding of Fact No. 8 found "[Dr. Z's] certification of [MMI] and assigned [IR] is supported by the preponderance of the evidence." Those findings are supported by sufficient evidence and are affirmed.

The carrier filed a Motion Nunc Pro Tunc to Request Correction of Clerical Error requesting that all references to Dr. Z's certification of MMI in the hearing officer's decision and order be corrected to reflect that Dr. Z actually certified that the claimant reached MMI on August 1, 2011. Because the hearing officer, in his decision and order, makes no reference to the August 1, 2011, date of MMI we cannot make a "clerical correction."

The evidence reflects that Dr. Z certified that the claimant reached MMI on August 1, 2011, not August 11, 2011. There is no certification in evidence from any doctor that the claimant reached MMI on August 11, 2011. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on August 11, 2011, and render a new decision that the claimant reached MMI on August 1, 2011, as reflected by the evidence and the record.

IR

The hearing officer's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge