

APPEAL NO. 130235
FILED APRIL 5, 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 (CCH) was held on December 13, 2012, with the record closing on December 21, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the issues before her, the hearing officer determined that: (1) the appellant/cross-respondent (claimant) sustained a compensable injury on [date of injury];¹ (2) the compensable injury of [date of injury], extends to a puncture wound to the left hand/wrist, but does not extend to staph infections of that wound or complex regional pain syndrome (CRPS) of the left upper extremity (UE); (3) the claimant has sustained no disability as a result of the compensable injury of [date of injury]; (4) the claimant reached maximum medical improvement (MMI) on April 2, 2008; (5) the claimant has a 27% impairment rating (IR); and (6) the claimant's average weekly wage (AWW) is \$541.33.

The claimant appealed the hearing officer's extent of injury and disability determinations. The respondent/cross-appellant (carrier) responded to the claimant's appeal on those issues, arguing affirmance. The carrier cross-appealed the hearing officer's MMI and IR determinations. The appeal file does not contain a response to the carrier's cross-appeal from the claimant. The hearing officer's determinations that the claimant sustained a compensable injury on [date of injury], and that the claimant's AWW is \$541.33 have not been appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

The claimant testified he was injured at work on [date of injury], when he accidentally punctured his left wrist while using a pneumatic nail gun.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], extends to a puncture wound to the left hand/wrist but does not extend to CRPS of the left UE is supported by sufficient evidence and is affirmed.

¹ We note that the Decision portion of the decision and order mistakenly identifies the date of injury as April 26, 2006, rather than the correct date of [date of injury].

The hearing officer also determined that the compensable injury of [date of injury], does not extend to staph infections of that wound.

In evidence are operative reports dated July 30, 2006, August 2, 2006, August 6, 2006, and August 9, 2006, discussing irrigation and debridement of the claimant's left hand, wrist, and forearm performed on those days due to a "severe left wrist and hand infection." A discharge summary dated August 10, 2006, noted that the claimant's wound cultures were "positive for methicillin-resistant staph aureus [MRSA]."

[Dr. G], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) examined the claimant on April 14, 2012, to determine MMI, IR, and extent of injury. In a narrative report dated May 2, 2012, Dr. G opined the following regarding extent of injury:

The injury to [the claimant's] left hand and wrist was due to infection and subsequent surgical procedures to treat the infection caused by a penetrating wound from a nail gun. The history, mechanism of injury, and outcome are consistent with the physical exam. Diagnosis: Severe loss of left wrist and hand function secondary to tissue debridement and scar formation following surgical treatment of infection.

[Dr. S], a post-designated doctor required medical examination (RME) doctor, examined the claimant on November 28, 2012. In a narrative report dated December 13, 2012, Dr. S opined the following regarding extent of injury:

This claimant had a puncture wound to the left wrist in late April 2006. Several months later he went to the emergency room with an extremely infected left wrist. With the degree of infection found at the time of his visit to the emergency room, that infection had clearly been going on for quite some time. While there is a significant length of time, approximately three months between the date of injury here and the infection being treated at the hospital, it is possible that the infection in late July 2006 would be related to that incident. . . . With no other reason for this claimant to have had a deep abscess such as he had, it is reasonable to believe that the compensable injury was the proximate cause of the deep staph infection that this claimant was treated for in July 2006.

[Dr. C], addressed extent of injury in a report dated December 6, 2012. Dr. C noted that the cultures taken "were positive for MRS[A]." Dr. C opined:

The claimant sustained a puncture wound to the left wrist area. This ultimately resulted in a deep-seated infection secondary to abscess formation. It is not unusual that this type of infection can take some time to develop. In all medical

probability however, the puncture wound was the cause of this infection. It should be understood that [the claimant] was compromised secondary to diabetes. This made him more susceptible to developing the infection. The diabetes however, was not caused by or aggravated by the injury.

In the Background Information section of her decision, the hearing officer states:

The alleged extent of the injury, however, may not be shown absent the use of expert medical evidence that meets the stringent standard articulated by the Texas Supreme Court in *Merrell Dow Pharmaceuticals v. Havner*, 953 S.W.2d 706 (Tex. 1997). In view of the conclusory nature of the medical opinions contained in the record of the [CCH], it must be determined that [the claimant] has not met his burden of proof as to the extent-of-injury issue.

We disagree that the medical opinions in this case were conclusory in nature. Dr. G, the designated doctor, Dr. S, the post-designated doctor RME doctor, and Dr. C, a peer review doctor, all opined that the claimant's staph infection was caused by the puncture wound sustained on [date of injury]. Dr. S and Dr. C both address the three-month lapse in time between the injury and the development of the staph infection. In light of the foregoing, we reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to staph infections of the puncture wound and render a new decision that the compensable injury of [date of injury], extends to staph infections of that wound.

MMI AND 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. Rule 130.1(d)(1) states that a certification of MMI and assignment of an IR requires completion, signing and submission of the Report of Medical Evaluation (DWC-69) and a narrative report.

The record contains two certifications of MMI and IR. The first certification is from Dr. G, the designated doctor. Dr. G certified that the claimant reached MMI statutorily on April 2, 2008, and assigned a 29% IR. Dr. G based the 29% IR on loss of range of motion (ROM) measurements of the claimant's left hand and fingers and left wrist. The second MMI/IR certification is from Dr. S, the post-designated doctor RME doctor. Dr. S certified that the claimant reached MMI statutorily on April 2, 2008, with a 27% IR. Dr. S based the 27% IR on loss of ROM measurements of the claimant's left hand and left wrist. Both Dr. G's and Dr. S' MMI/IR certifications consider and rate the staph infection.

The hearing officer noted in her decision that Dr. G "erroneously included the infections and surgical treatment. . ." and "[s]ince [Dr. G's] medical conclusions were based upon an incorrect perception of the compensable injury, his report can not be adopted." The hearing officer found in Finding of Fact No. 8 that "[a] preponderance of the medical evidence contained in the records of the [CCH] is contrary to the report of [Dr. G]." The hearing officer determined that the claimant reached MMI on April 2, 2008, with a 27% IR per Dr. S. However, given that we have reversed the hearing officer's determination that the compensable injury of [date of injury], does not extend to staph infections of the puncture wound and have rendered a new decision that the compensable injury of [date of injury], does extend to staph infections of that wound, Finding of Fact No. 8 is not supported by the evidence. Accordingly, we reverse the hearing officer's determination that that the claimant reached MMI on April 2, 2008, with a 27% IR.

Because there are two certifications of MMI and IR in evidence that rate the entire compensable injury, we do not consider it appropriate to simply render a decision regarding the claimant's MMI and IR. We therefore remand the MMI and IR issues to the hearing officer to make a decision based on the remaining certifications in evidence.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], extends to a puncture wound to the left hand/wrist, but does not extend to CRPS of the left UE.

We reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to staph infections of that wound and render a new

decision that the compensable injury of [date of injury], extends to staph infections of that wound.

We reverse the hearing officer's determinations that the claimant reached MMI on April 2, 2008, and that the claimant's IR is 27%, and we remand the issues of MMI and IR to the hearing officer for further action 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 **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge