

APPEAL NO. 130350
FILED MARCH 29, 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 December 17, 2012, with the record closing on December 20, 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 November 11, 2011; (2) the claimant's impairment rating (IR) is 6%; (3) the claimant's average weekly wage (AWW) is \$351.81; and (4) the claimant did not have disability resulting from the compensable injury of [date of injury], beginning November 12, 2011, through October 11, 2012. The claimant appealed the hearing officer's determinations. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]; the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for purposes of MMI and IR is [Dr. A-N]; Dr. A-N certified that the claimant reached MMI on November 11, 2011, with a 6% IR; the date of statutory MMI is October 11, 2012; and the compensable injury extends to bilateral carpal tunnel syndrome (CTS).

AWW, DISABILITY, AND MMI

The hearing officer's determinations that the claimant's AWW is \$351.81, that the claimant did not have disability resulting from the compensable injury of [date of injury], beginning November 12, 2011, through October 11, 2012, and that the claimant reached MMI on November 11, 2011, are supported by sufficient evidence and are 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. 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.

The hearing officer determined that the claimant's IR is 6% per Dr. A-N, the designated doctor. Dr. A-N examined the claimant on March 22, 2012, and certified the claimant reached clinical MMI on November 11, 2011, with a 6% IR. Dr. A-N based the 6% IR on range of motion (ROM) measurements taken of the claimant's left and right wrists.

Regarding the claimant's left wrist, Dr. A-N found 60° of extension resulting in 0% impairment using Figure 26, page 3/36 of 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); 60° of flexion resulting in 0% impairment using Figure 26; 30° of ulnar deviation resulting in 0% impairment using Figure 29 on page 3/38 of the AMA Guides; and 20° of radial deviation for 0% impairment using Figure 29. There was no inconsistency in the narrative report regarding the ROM measurements for the claimant's left wrist.

Regarding the claimant's right wrist, Dr. A-N found 30° of extension resulting in 5% impairment using Figure 26 on page 3/36, and 30° of flexion, which also resulted in 5% of impairment using Figure 26. However, concerning the right wrist ulnar deviation and radial deviation measurements, Dr. A-N's report listed two different sets of measurements. On page four of her narrative report dated March 22, 2012, Dr. A-N lists 30° of ulnar deviation and 20° of radial deviation for the right wrist. However, on page five of her narrative report, Dr. A-N lists 20° of ulnar deviation and 30° of radial deviation for the right wrist. Using Figure 29 on page 3/38 of the AMA Guides, Dr. A-N assessed 0% impairment for the ulnar deviation and 0% for the radial deviation of the right wrist on page five of her narrative report. We note that using Figure 29 on page 3/38 20° of ulnar deviation results in 2% impairment, not 0% impairment as found by Dr. A-N.

Dr. A-N then added the 5% impairment for right wrist extension with the 5% impairment for right wrist flexion, which resulted in a 10% upper extremity (UE) impairment, and then used Table 3 on page 3/20 to convert the 10% UE impairment to a 6% whole person impairment.

The Appeals Panel has held that a mathematical correction to a certification of an IR may be made when doing so simply corrects an obvious mathematical error and does not involve the exercise of judgment as to what the proper figures were. See Appeals Panel Decision 101949, decided February 22, 2011. However, in the case on

appeal, Dr. A-N's narrative report contains an inconsistency between the ROM measurements of ulnar deviation and radial deviation in the claimant's right wrist, and as such we cannot determine what the correct ROM measurements are regarding ulnar deviation and radial deviation of the claimant's right wrist and whether or not Dr. A-N's 6% IR is correct or requires a mathematical correction. Therefore, we reverse the hearing officer's determination that the claimant's IR is 6%.

The hearing officer's determination that the claimant reached MMI on November 11, 2011, has been affirmed as being supported by the evidence. There are two other certifications of MMI and IR in evidence. The first is from [Dr. R], a doctor selected by the treating doctor acting in place of the treating doctor. Dr. R examined the claimant on August 22, 2012, and certified that the claimant reached MMI statutorily on May 12, 2012, with a 15% IR. However, because Dr. R's certification of MMI and IR contains a date of MMI different from the affirmed November 11, 2011, date of MMI, his certification cannot be adopted.

The other certification of MMI and IR in evidence is from [Dr. A], the treating doctor. Dr. A examined the claimant on December 14, 2011, and certified the claimant reached clinical MMI on the affirmed date of November 11, 2011, and assigned a 0% IR. In a narrative report dated December 14, 2011, Dr. A listed diagnoses of: 1. bilateral CTS; 2. status post-bilateral CTS release surgeries; 3. bilateral trigger thumbs, non-industrial, unrelated to the industrial injury of [date of injury] (the cumulative trauma issue); and 4. bilateral hand arthritis, non-industrial, unrelated to the industrial injury of [date of injury] (the cumulative trauma issue). Dr. A assessed a 0% IR based on Tables 11, 12, 15, and 16, pages 3/48 through 3/57 of the AMA Guides. Regarding the 0% IR Dr. A noted:

[The claimant] had no residual sensory or motor deficits associated with her bilateral carpal syndrome. She has full, preserved strength in the median nerve distribution about the volar forearm. She has strength about the interdigital, forearm flexor and thenar musculature about the bilateral hand and digits. She has no residual sensory deficits.

Dr. A's 0% IR is based on the affirmed MMI date of November 11, 2011. Dr. A rated the entire compensable injury and properly calculated an IR for the claimant's injury according to the AMA Guides. Given that we have reversed the hearing officer's determination that the claimant's IR is 6%, we render a new decision that the claimant's IR is 0%.

SUMMARY

We affirm the hearing officer's determination that the claimant's AWW is \$351.81.

We affirm the hearing officer's determination that the claimant did not have disability resulting from the compensable injury of [date of injury], beginning November 12, 2011, through October 11, 2012.

We affirm the hearing officer's determination that the claimant reached MMI on November 11, 2011.

We reverse the hearing officer's determination that the claimant's IR is 6%, and we render a new decision that the claimant's IR is 0%.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge