

APPEAL NO. 130489
FILED APRIL 16, 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 October 15, 2012, with the record closing on January 14, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on September 13, 2011, with a five percent impairment rating (IR). The appellant (carrier) appeals the hearing officer's determinations, contending the hearing officer's decision contains a clerical error requiring correction. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant failed to appear for the CCH scheduled on October 15, 2012. The record was held open and the hearing officer sent a letter to the claimant advising him that the CCH had convened and that the record would be held open for 10 days to afford the claimant an opportunity to respond and request that the CCH be rescheduled for him to present evidence; however, the claimant did not respond to the 10-day letter.

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 Texas Department of Insurance, Division of Workers' Compensation (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. M] was appointed by the Division to opine on the issues of MMI and IR. Dr. M examined the claimant on September 13, 2011, and in a Report of Medical Evaluation (DWC-69) and narrative dated September 13, 2011, certified the claimant reached clinical MMI on July 20, 2011 (not September 13, 2011, as recited by the hearing officer in his Background Information, Finding of Fact No. 8, Conclusion of Law No. 3, and Decision) with a five percent IR. Dr. M noted in his narrative report that the claimant underwent a disc removal at L5-S1 on January 20, 2011, and in his comments stated that: "I would . . . place [the claimant] at [MMI] six months following surgery as of July 20, 2011." Dr. M further noted that the claimant showed clinical evidence of

lumbosacral injury without radiculopathy or loss of motion segment integrity, and placed the claimant in Diagnosis-Related Estimate Lumbosacral Category II: Minor Impairment.

The hearing officer in Finding of Fact No. 9 found that “[t]he [IR] evaluation of [Dr. M] was performed 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)],” and in Finding of Fact No. 10 found “[a] preponderance of the evidence is not contrary to [Dr. M’s] certification of [MMI] and [IR].” Those findings are supported by sufficient evidence and are affirmed.

The carrier filed a request to correct a clerical error, requesting that the decision and order reflect that the claimant reached MMI on July 20, 2011, as certified by Dr. M.

The evidence reflects that Dr. M certified the claimant reached MMI on July 20, 2011, not September 13, 2011. There is no other certification in evidence from any other doctor. Accordingly, we reverse the hearing officer’s determination that the claimant reached MMI on September 13, 2011, and render a new decision that the claimant reached MMI on July 20, 2011, as reflected by the evidence and the record.

IR

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

The true corporate name of the insurance carrier is **AMERISURE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CINDY GHALIBAF
5221 NORTH O’CONNOR BOULEVARD, SUITE 400
IRVING, TEXAS 75039-3711.**

Carisa Space-Beam
Appeals Judge
CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge