

APPEAL NO. 130515
APRIL 8, 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 January 16, 2013, with the record closing on January 29, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: the compensable injury of [date of injury], extends to left wrist sprain/strain but not to neuralgia, neuritis, and radiculitis; the appellant (claimant) reached maximum medical improvement (MMI) on July 1, 2012; and the claimant's impairment rating (IR) is 11%. The claimant appealed all of the hearing officer's determinations. The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and remanded.

The parties stipulated that: (1) the claimant sustained a compensable injury on [date of injury], that included at least a left wrist fracture; (2) [Dr. M] was appointed as the designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI and IR; (3) Dr. M certified that the claimant reached MMI on July 1, 2012, and assigned an 11% IR;¹ and (4) the claimant reached MMI [statutorily] on July 1, 2012.

EXTENT OF INJURY AND MMI

The hearing officer's determinations that the compensable injury of [date of injury], extends to left wrist sprain/strain but not to neuralgia, neuritis, and radiculitis, and that the claimant reached MMI on July 1, 2012, 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

¹ We note this stipulation is not listed in the decision and order.

injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer determined that the claimant reached MMI on July 1, 2012, as stipulated to by the parties, with an 11% IR per Dr. M, the designated doctor.

Dr. M examined the claimant on July 30, 2012. In a narrative report dated that same date, Dr. M assessed the claimant's diagnoses as "left wrist pain-post open reduction fixation of distal radius fracture with post-traumatic radiocarpal, osteoarthritis, chronic." In an amended Report of Medical Evaluation (DWC-69), Dr. M certified that the claimant reached MMI statutorily on July 1, 2012, and assigned an 11% IR. Dr. M based the 11% IR on range of motion (ROM) measurements of the claimant's left wrist resulting in 7% upper extremity impairment and a 12% impairment for "moderate to severe osteoarthritic changes and radiographic changes consistent with carpal instability."

Dr. M's IR includes a rating for post-traumatic radiocarpal osteoarthritis. The extent-of-injury issue did not include this condition, nor was the compensability of this condition stipulated to by the parties or argued at the CCH. Dr. M's 11% IR rates an injury not determined to be a part of the compensable injury, and as such it cannot be adopted. See Appeals Panel Decision (APD) 110463, decided June 13, 2011; and APD 101567, decided December 20, 2010. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 11%.

There is only one other certification of MMI and IR in evidence, which is from [Dr. F], a doctor selected by the treating doctor acting in place of the treating doctor. Dr. F examined the claimant on September 24, 2012, and in an amended DWC-69 certified that the claimant reached MMI statutorily on July 1, 2012, with a 23% IR. Dr. F based the 23% IR on loss of ROM for the claimant's left wrist combined with loss of grip strength in the claimant's left wrist. On the DWC-69 and in a narrative report accompanying his amended DWC-69, Dr. F includes diagnoses of neuralgia, neuritis, and radiculitis. As we have affirmed the hearing officer's determination that the compensable injury does not extend to those conditions, Dr. F's IR rates conditions that are not a part of the compensable injury, and as such it cannot be adopted. APD 110463, *supra*, and APD 101567, *supra*. Accordingly, Dr. F's IR cannot be adopted.

Since there is no other assignment of IR in evidence that can be adopted, we remand the issue of IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], extends to left wrist sprain/strain but not to neuralgia, neuritis, and radiculitis.

We affirm the hearing officer's determination that the claimant reached MMI on July 1, 2012.

We reverse the hearing officer's determination that the claimant's IR is 11%, and remand the issue of IR to the hearing officer to make a determination on IR consistent with this decision.

REMAND INSTRUCTIONS

Dr. M is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. M is still qualified and available to be the designated doctor. If Dr. M is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's IR for the [date of injury], compensable injury.

The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], includes left wrist fracture as stipulated to by the parties and left wrist sprain/strain as administratively determined. Further, the hearing officer is to advise the designated doctor that the [date of injury], compensable injury does not include neuralgia, neuritis, and radiculitis.

The hearing officer is to request the designated doctor to rate the entire compensable injury based on the claimant's condition as of July 1, 2012, the claimant's date of MMI, 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) considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on IR 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **[a certified self-insured]**
and the name and address of its registered agent for service of process is

[NAME]
[ADDRESS]
[CITY, TEXAS ZIP].

Carisa Space-Beam
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge