

APPEAL NO. 130668  
FILED MAY 2, 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 January 30, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to a bicipital tenosynovitis, impingement with bursitis, and posterior labral tear with adjacent parameniscal cyst extending along the posterior aspect of the shoulder; (2) the compensable injury of [date of injury], does not extend to the right shoulder rotator cuff tear; and (3) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) by [Dr. M] on March 16, 2010, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12).

The appellant (claimant) appealed the determinations adverse to him. The respondent (carrier) responded, urging affirmance. The hearing officer's determination that the compensable injury of [date of injury], extends to a bicipital tenosynovitis, impingement with bursitis, and posterior labral tear with adjacent parameniscal cyst extending along the posterior aspect of the shoulder was not appealed and has therefore become final pursuant to Section 410.169.

**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 claimant testified that he was injured when he fell on his right shoulder due to a cramp in his leg while crossing a service road.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of [date of injury], does not extend to the right shoulder rotator cuff tear is supported by sufficient evidence and is affirmed.

**FINALITY**

Section 408.123(e) provides that except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR

certification must be disputed within 90 days of delivery of written notice through verifiable means; that the notice must contain a copy of a valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c); and that the 90-day period begins on the day after the written notice is delivered to the party wishing to dispute a certification of MMI or an IR assignment, or both. Section 408.123(f) provides in part that an employee's first certification of MMI or assignment of an IR may be disputed after the period described in Subsection (e) if: (1) compelling medical evidence exists of: (A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the [IR].

The hearing officer determined that the first certification of MMI and assigned IR by Dr. M on March 16, 2010, became final under Section 408.123 and Rule 130.12.

Dr. M, the claimant's treating doctor at the time, examined the claimant on March 16, 2010, and in a DWC-69 dated that same date, certified that the claimant reached MMI on March 16, 2010, with no permanent impairment. In a narrative report attached to his DWC-69, Dr. M noted:

Findings of the certifying examination/explanation of performed analysis are:

840.9, Shoulder/Upper Arm Strain

843.9, Thigh/Hip Strain

840.4, Rotator Cuff (Capsule) Sprain

840.0, Acromioclavicular (Joint) (Ligament) Sprain

As previously noted, the hearing officer's determination that the compensable injury of [date of injury], extends to a bicipital tenosynovitis, impingement with bursitis, and posterior labral tear with adjacent parameniscal cyst extending along the posterior aspect of the shoulder was not appealed and has therefore become final.

In Appeals Panel Decision (APD) 111227, decided October 13, 2011, the Appeals Panel reversed a hearing officer's determination that the first certification of MMI and assigned IR became final and rendered a new decision that the first certification did not become final. The certifying doctor had failed to rate the thoracic spine which had been administratively determined by the Texas Department of Insurance, Division of Workers' Compensation to be part of the compensable injury although the doctor had rated other parts of the body. In that decision, the Appeals Panel stated:

The cases make clear that the failure to rate the entire compensable injury constitutes compelling medical evidence of a significant error by the certifying doctor in applying the appropriate [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)] or in calculating the IR.

In the case on appeal, Dr. M failed to rate the compensable bicipital tenosynovitis, impingement with bursitis, and posterior labral tear with adjacent parameniscal cyst extending along the posterior aspect of the shoulder as administratively determined, and therefore, the exception in Section 408.123(f)(1)(A) applies. See *also* APD 121215, decided August 30, 2012; and APD 130036, decided February 28, 2013. Accordingly, we reverse the hearing officer's determination that the first certification of MMI and assigned IR by Dr. M on March 16, 2010, became final under Section 408.123 and Rule 130.12, and we render a new decision that the first certification of MMI and assigned IR by Dr. M on March 16, 2010, did not become final under Section 408.123 and Rule 130.12.

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  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701-3232.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge