

APPEAL NO. 130943
FILED JUNE 13, 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 November 27, 2012, with the record closing on February 25, 2013, 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 February 20, 2011; (2) the claimant's impairment rating (IR) is 5%; (3) the compensable injury of [date of injury], extends to post-concussion syndrome and a contusion of the head; and (4) the compensable injury of [date of injury], does not extend to cervical radiculopathy, post-traumatic syndrome with adjustment disorder, closed head trauma, disc protrusion at C4-5, and neuroma of the first digit of the right hand.

The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The claimant also appealed the hearing officer's determination that the compensable injury does not extend to cervical radiculopathy, post-traumatic syndrome with adjustment disorder, closed head trauma, disc protrusion at C4-5, and neuroma of the first digit of the right hand. The respondent (self-insured) responded, urging affirmance of the disputed determinations.

The hearing officer's determination that the compensable injury of [date of injury], does extend to post-concussion syndrome and a contusion of the head was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], at least in the form of a cervical strain syndrome, cerebral contusion, and anxiety syndrome; the compensable injury of [date of injury], extends to a contusion of the head; and that the claimant reached statutory MMI on February 20, 2011. The hearing officer noted in her decision and order that the claimant was injured when a scanner snapped loose from its mounting bracket and struck the claimant on the right side of her head and neck.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to cervical radiculopathy, post-traumatic syndrome with adjustment

disorder, closed head trauma, disc protrusion at C4-5, and neuroma of the first digit of the right hand is supported by sufficient evidence and is affirmed.

MMI

The hearing officer noted the following as stipulation 1F: “[c]laimant’s statutory [MMI] date is February 20, 2011.” A review of the record reflects the parties stipulated on the record that: parties agree on February 20, 2011, claimant reached statutory MMI. Prior to giving her opening argument, the ombudsman asked: “Was the MMI date resolved?” Both the attorney for the self-insured and the hearing officer answered affirmatively and the ombudsman replied, “I just wanted to make sure.” The claimant specifically appeals the conclusion of law from the hearing officer regarding the MMI date. However, both at the CCH and on appeal the claimant requested adoption of the certification of MMI and IR from her treating doctor, [Dr. B], who certified the claimant reached MMI on February 20, 2011, and assigned a 25% IR. The hearing officer’s determination that the claimant reached MMI on February 20, 2011, is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers’ Compensation (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 parties stipulated that the Division appointed designated doctor, [Dr. J] certified that the claimant reached MMI on February 20, 2011, and assigned a 5% IR. Dr. J examined the claimant on March 31, 2011, for purposes of MMI and IR. Dr. J provided in his narrative report dated March 31, 2011, the following diagnoses: history of disc herniation at C4-5 and EMG positive for radiculopathy at levels C8 and T1. Using 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), Dr. J assessed 5% based on the Cervicothoracic Diagnosis-Related Estimate (DRE) Category II. Dr. J stated that the claimant showed clinical evidence of cervicothoracic spine injury without the presence of radiculopathy in the form of reflex loss or atrophy, or loss of motion segment integrity.

Dr. J further stated that upon review of the medical records and physical examination, the claimant showed no diagnosis related impairment for the post-concussion syndrome that would be ratable. However, as previously noted, the parties stipulated that the compensable injury of [date of injury], includes a cervical strain syndrome, cerebral contusion, anxiety syndrome, and contusion of the head. The hearing officer's determination that the compensable injury extends to a post-concussion syndrome and contusion of the head has been affirmed. Dr. J did not rate or consider all of the compensable injury in certifying the claimant's IR. Because the entire compensable injury was not rated, Dr. J's certification of MMI and IR cannot be adopted. See Appeals Panel Decision (APD) 110267, decided April 19, 2011. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 5%.

There is only one other certification in evidence with the affirmed date of MMI, the statutory date of February 20, 2011. The claimant's treating doctor, Dr. B certified that the claimant reached MMI on February 20, 2011, with a 25% IR, using the AMA Guides, based on an examination of September 6, 2012. Dr. B stated that the claimant has a disc herniation at C4-5 with myelopathy. "This places her in the DRE Cervicothoracic Category IV. . . . With regard to the head, I could not find a diagnosis that had a ratable impairment; however, some of her residual head pain is related to the neck."

The AMA Guides provide in part on page 3/104, loss of structural integrity is defined as more than 3.5 mm of translation of one vertebra on another, or angular motion at one motion segment that is more than 11° greater than the angular motion at an adjacent motion segment. If a claimant is placed in DRE Cervicothoracic Category IV on the basis of structural inclusions, the AMA Guides provide that structural inclusions are defined as: (1) greater than 50% compression of one vertebral body without residual neurologic compromise; (2) multilevel motion segment structural compromise without residual neurologic motor compromise, for example, multilevel fracture or dislocation.

Dr. B did not describe the conditions required in the AMA Guides for placement in DRE Cervicothoracic Category IV. Dr. B did not discuss in his report the anxiety syndrome which has been stipulated as part of the compensable injury. Dr. B did not consider or provide impairment for the entire compensable injury. Accordingly, his certification cannot be adopted.

Because there is no other certification of IR in evidence with the MMI date of February 20, 2011, that can be adopted, we remand the 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], does not extend to cervical radiculopathy, post-traumatic syndrome with adjustment disorder, closed head trauma, disc protrusion at C4-5, and neuroma of the first digit of the right hand.

We affirm the hearing officer's determination that the claimant reached MMI on February 20, 2011.

We reverse the hearing officer's determination that the claimant's IR is 5%.

REMAND INSTRUCTIONS

Dr. J is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. J is still qualified and available to be the designated doctor. If Dr. J 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 request the designated doctor to rate the entire compensable injury based on the claimant's condition as of February 20, 2011, the claimant's date of MMI, in accordance with the AMA Guides considering the medical records and the certifying examination.

The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], includes cervical strain syndrome, cerebral contusion, anxiety syndrome, post-concussion syndrome, and a contusion of the head. Further, the hearing officer is to advise the designated doctor that the [date of injury], compensable injury does not include cervical radiculopathy, post-traumatic syndrome with adjustment disorder, closed head trauma, disc protrusion at C4-5, and neuroma of the first digit of the right hand.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge