

APPEAL NO. 131084  
FILED JULY 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 (CCH) was held on November 12, 2012, continued on December 14, 2012, and March 25, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer determined that: (1) the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by [Dr. W] on April 24, 2012, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (2) the appellant's (claimant) IR is 12%; (3) the claimant's average weekly wage (AWW) is \$459.84; and (4) the compensable injury of [date of injury], does not extend to a right knee medial meniscus tear and cervical sprain/strain.

The claimant appealed the hearing officer's extent of injury, finality, IR and AWW determinations. The respondent (carrier) responded, urging affirmance.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated that: it is undisputed that the claimant sustained a compensable right shoulder sprain/strain, right shoulder SLAP tear, right shoulder rotator cuff tear, head contusion, right knee sprain/strain, left ankle sprain/strain, left ankle anterolateral ligament injury on [date of injury]; [Dr. A] was appointed as the designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI, IR and extent of injury; and the claimant reached MMI on the statutory date of March 26, 2012, for the compensable injury of [date of injury]. The claimant testified that he fell at work injuring his right shoulder, head, and left ankle on [date of injury].

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of [date of injury], does not extend to a right knee medial meniscus tear and cervical sprain/strain is supported by sufficient evidence and is affirmed.

**FINALITY**

The hearing officer's determination that the first certification of MMI and IR assigned by Dr. W on April 24, 2012, did not become final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

## IR

The hearing officer's determination that the claimant's IR is 12% is supported by sufficient evidence and is affirmed.

## AWW

The claimant appealed the hearing officer's AWW determination asserting that the hearing officer erred in not including the value of benefits received from the employer such as the personal use of the employer's truck and gas card to his AWW. The definition of "wages" in Section 401.011(43) includes all forms of remuneration payable for a given period to an employee for personal services. The term includes market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration. In this case, there was conflicting evidence and the hearing officer resolved that conflict by determining that the claimant's AWW was accurately reflected on the Employer's Wage Statement (DWC-3), which did not include the value of benefits asserted by the claimant.

Next, the claimant asserted that there was a typographical error on the DWC-3 as to the total gross wages earned, thereby the claimant's AWW was \$501.87, not \$459.84.

The hearing officer made the following Findings of Fact:

No. 11: [The] [c]laimant worked for Employer for [13] consecutive weeks immediately preceding the work related injury on [date of injury], and earned a total of \$5,977.99 in gross wages during those [13] weeks.

No. 12: [The] [c]laimant's AWW can be calculated by dividing the \$5,977.99 in gross wages earned in the [13] weeks prior to the work related injury on [date of injury], by 13 weeks which equals an AWW of \$459.84.

At the CCH held on December 14, 2012, the carrier informed the hearing officer that the DWC-3 in evidence had a mathematical error with regard to the sum of the total gross wages earned. The carrier stated that the DWC-3 wages reported for the 13 weeks added to the sum of \$6,524.37, not \$5,977.99. Dividing the total gross wages earned of \$6,524.37 by 13 equals \$501.87.<sup>1</sup> We note that the Benefit Review

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<sup>1</sup> The DWC-3 indicates that gross wages over 13 weeks are: (1) \$493.39 +; (2) \$443.21 +; (3) \$487.81 +; (4) \$487.83 +; (5) \$423.70 +; (6) \$538.02 +; (7) \$571.48 +; (8) \$550.56 +; (9) \$558.93 +; (10) \$546.38 +; (11) \$546.38 +; (12) \$458.55 +; and (13) \$418.13. Adding the gross wages for 13 weeks equals to \$6,524.37. Dividing the total gross wages by 13 weeks equals \$501.87. Therefore, the claimant's AWW is \$501.87.

Conference Report dated August 31, 2012, states that the carrier's position regarding the claimant's AWW was that it was calculated to be \$501.87 ( $\$6,542.37/13$ ). We agree that the DWC-3 contained a mathematical error in adding the reported gross wages for the 13 weeks. The correct total gross wages earned for the 13 weeks is \$6,524.37, and the AWW is \$501.87. Accordingly, we reverse the hearing officer's determination that the claimant's AWW is \$459.84, and render a new decision that the claimant's AWW is \$501.87.

### **SUMMARY**

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to a right knee medial meniscus tear and cervical sprain/strain.

We affirm the hearing officer's determination that the first certification of MMI and IR assigned by Dr. W on April 24, 2012, did not become final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determination that the claimant's IR is 12%.

We reverse the hearing officer's determination that the claimant's AWW is \$459.84 and render a new decision that the claimant's AWW is \$501.87.

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

**RICHARD J. GERGASKO  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge



