

APPEAL NO. 131106
FILED JULY 15, 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 April 18, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [date of injury], compensable injury does not extend to pain disorder associated with both psychological factors and a general medical condition and depression; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 7, 2012; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, and IR. The appeal file does not contain a response from the respondent (carrier) to the claimant's appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury, the carrier has accepted a lumbar sprain/strain, and it has been adjudicated that lumbar disc bulges at L4-5 and L5-S1 are compensable. The claimant testified that she was injured when she twisted while lifting a box at work.

EXTENT OF INJURY

The hearing officer's determination that the [date of injury], compensable injury does not extend to pain disorder associated with both psychological factors and a general medical condition and depression is supported by sufficient evidence and is affirmed.

MMI/IR

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

The hearing officer found that [Dr. A] was appointed by the Division to determine, among other things, MMI and IR. Dr. A examined the claimant on October 30, 2012, and opined that the claimant's compensable injury included a lumbar sprain/strain with lumbar disc bulges at L4-5 and L5-S1. Dr. A provided alternative certifications of MMI and IR. In the first certification, Dr. A certified that the claimant reached MMI on January 7, 2012, with a five percent IR, 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) considering only the lumbar sprain/strain.

Dr. A additionally certified that the claimant reached MMI on August 3, 2012, with a five percent IR using the AMA Guides considering the lumbar sprain/strain as well as lumbar spine disc bulges at L4-5 and L5-S1. Dr. A noted that the claimant underwent extensive physical therapy for over six months with noted improvement and that she was unable to obtain a steroid nerve block due to uncontrolled diabetes which remains uncontrolled since at least April of 2012 to the present. Dr. A further noted that there have been no surgical recommendations and that August 3, 2012, was the last treatment note where it appears the claimant's condition had become static. Dr. A assessed five percent impairment, placing the claimant in Diagnosis-Related Estimate (DRE) Lumbosacral Category II: Minor Impairment. As previously noted, the parties stipulated that the carrier has accepted a lumbar sprain/strain, and it has been adjudicated that lumbar disc bulges at L4-5 and L5-S1 are compensable.

In the Background Information portion of her decision, the hearing officer noted that Dr. A found the claimant reached MMI on January 7, 2012, with a five percent IR under Lumbosacral DRE Category II based on a lumbar sprain/strain with lumbar disc bulges at L4-5 and L5-S1. The hearing officer further stated that the preponderance of the evidence was not contrary to the findings of the designated doctor. However, a review of the evidence establishes that the certification from Dr. A which considered both the lumbar sprain/strain and the lumbar disc bulges at L4-5 and L5-S1 was the certification that the claimant reached MMI on August 3, 2012, with a five percent IR.

The certification mistakenly adopted by the hearing officer only considered the lumbar sprain/strain and did not consider the lumbar disc bulges at L4-5 and L5-S1,

which the parties stipulated are part of the compensable injury. Because the certification from Dr. A that the claimant reached MMI on January 7, 2012, did not consider the entire compensable injury it cannot be adopted. Accordingly, the hearing officer's determination that the claimant reached MMI on January 7, 2012, is reversed.

The only other certification in evidence was the alternative certification from Dr. A that the claimant reached MMI on August 3, 2012, which considered both the lumbar sprain/strain and the lumbar disc bulges at L4-5 and L5-S1. Dr. A noted that the claimant had undergone extensive physical therapy with noted improvement and that August 3, 2012, was the last treatment note where it appeared the claimant's condition had become static. The claimant argued at the CCH that she was not at MMI because she needed additional treatment including epidural steroid injections. However, the hearing officer was persuaded that the preponderance of the medical evidence was not contrary to the findings of the designated doctor. This is supported by the evidence, but we note the hearing officer mistakenly referenced the date included on Dr. A's certification that considered only the lumbar sprain/strain. Accordingly, we render a new decision that the claimant reached MMI on August 3, 2012, which was the date Dr. A certified the claimant reached MMI considering the entire compensable injury.

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

SUMMARY

The hearing officer's determination that the compensable injury does not extend to pain disorder associated with both psychological factors and a general medical condition and depression is affirmed.

The hearing officer's determination that the claimant's IR is five percent is affirmed.

The hearing officer's determination that the claimant reached MMI on January 7, 2012, is reversed and a new decision rendered that the claimant reached MMI on August 3, 2012.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge