

APPEAL NO. 131541
FILED AUGUST 29, 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 May 23, 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 tenosynovitis of the right hand, ganglion cyst of the right hand, and complex regional pain syndrome (CRPS)/reflex sympathetic dystrophy (RSD) (causalgia) of the right upper extremity (UE); (2) the respondent (claimant) reached maximum medical improvement (MMI) on January 10, 2013; and (3) the claimant's impairment rating (IR) is 17%. The appellant (carrier) appealed the hearing officer's extent of injury, MMI, and IR determinations. The claimant responded, urging affirmance.

DECISION

Reversed and rendered in part and reversed and remanded in part.

The claimant sustained a crush injury to his right hand when it was caught and pinched between a concrete chute and a metal hanger on the side of the truck on [date of injury]. The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the carrier has accepted a right hand and long finger contusion with avulsion fracture at the base of the proximal phalanx ulnar side of the long finger. The Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. B] as the first designated doctor for purposes of determining MMI and IR, and subsequently appointed [Dr. S] as the second designated doctor for the purpose of determining MMI, IR and extent of injury.

EXTENT OF INJURY

The hearing officer determined that the compensable injury of [date of injury], extends to tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE. In the Background Information section of the decision, the hearing officer states that Dr. S, the second designated doctor, examined the claimant on May 7, 2013, and he "determined that the disputed conditions were caused by the crushing injury of the soft tissues of the right hand, with fracture of the proximal phalanx of the right middle finger." The hearing officer found that Dr. S's determination on extent of injury was supported by the preponderance of the evidence. The extent-of-injury conditions in dispute require expert evidence to establish a causal connection with the compensable injury. See City of Laredo v. Garza, 293 S.W.3d 625

(Tex. App.-San Antonio 2009, no pet.) citing Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007).

In evidence is Dr. S's narrative report dated May 7, 2013, in which he states that the claimant sustained a right hand crush injury, noting that he had previously examined the claimant for the purpose of determining MMI and IR. Dr. S noted that the claimant continued to have pain since the last time he examined him and he noted that the claimant had signs of CRPS/RSD, and also referenced in the claimant's medical records noting signs of CRPS/RSD. Further, Dr. S noted that the claimant received a stellate ganglion block on January 10, 2013. Dr. S concluded that his opinion on the extent-of-injury conditions were "based on reasonable medical probability; [that] the accident/incident giving rise to the compensable injury(s) is [s]prain/[s]train of the right wrist and hand [t]enosynovitis in the right hand/wrist, right hand ganglion cyst, and right hand causalgia/[CRPS/RSD]." Although the claimed extent-of-injury conditions are listed in the record as indicated by Dr. S in his narrative report, Dr. S does not provide an explanation of causation for the claimed conditions in his narrative report dated May 7, 2013.

In Appeals Panel Decision (APD) 110054, decided March 21, 2011, the Appeals Panel stated that "[a]lthough the claimed conditions are listed in the record, there is not any explanation of causation for the claimed conditions in the record. We hold that in this case the mere recitation of the claimed conditions in the medical records without attendant explanation how those conditions may be related to the compensable injury does not establish those conditions are related to the compensable injury within a reasonable degree of medical probability." In APD 120041, decided March 12, 2012, the Appeals Panel stated "[w]hile the claimed conditions are all mentioned in various reports and diagnostic studies, there is insufficient medical evidence linking the claimed conditions to the compensable injury or explaining how the mechanism of the injury caused the claimed conditions."

In this case, the conditions of tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE are mentioned in the medical reports and diagnostic studies; however, there is insufficient medical evidence linking the disputed extent-of-injury conditions to the compensable injury or explaining how the crush hand injury caused the claimed conditions.

In reviewing the record, we note that none of the medical reports in evidence provide any explanation of causation for how the claimed extent-of-injury conditions in dispute were caused by the claimant's work injury of [date of injury]. Consequently, the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We

reverse the hearing officer's determination that the compensable injury of [date of injury], extends to tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE, and we render a new decision that the compensable injury of [date of injury], does not extend to tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE.

MMI/IR

Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the 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. See also Section 401.011(30)(A). 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. See 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)).

The hearing officer determined that the claimant reached MMI January 10, 2013, with a 17% IR based on [Dr. KM] certification of MMI/IR, which considered and rated tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE. As stated above, we have rendered a new decision that these conditions are not part of the compensable injury. Given that we have reversed the hearing officer's extent-of-injury determination and we rendered a new decision that the compensable injury of [date of injury], does not extend to tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE, the hearing officer's MMI/IR determinations are not supported by the evidence because they consider and rate conditions that are not part of the compensable injury. See APD 110463, decided June 13, 2011, and APD 101567, decided December 20, 2010. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on January 10, 2013, with a 17% IR.

In evidence are two other certifications of MMI/IR from Dr. B, the first designated doctor, and Dr. S, the second designated doctor. Dr. B examined the claimant on March 31, 2012, and in a Report of Medical Evaluation (DWC-69) dated that same date, certified that the claimant had not reached MMI. In a narrative report dated April 30, 2012, Dr. B diagnosed the claimant with tenosynovitis and a ganglion cyst of the right hand, and he determined that the claimant had not reached MMI because he had not received adequate care in part for the tenosynovitis and ganglion cyst conditions. Dr. B's certification of MM/IR cannot be adopted because he considered conditions that we

have determined are not part of the compensable injury. See APD 110463, *supra*, and APD 101567, *supra*.

The only other certification of MMI/IR is from Dr. S, the second designated doctor. Dr. S examined the claimant on November 12, 2012, and in a DWC-69 dated November 21, 2012, certified that the claimant reached MMI on November 12, 2012, with a 7% IR. With regard to the MMI date, Dr. S's narrative report dated November 21, 2012, states that he examined the claimant on November 12, 2012, and referred the claimant for a functional capacity evaluation (FCE) to complete his examination regarding MMI and IR. Dr. S noted that the FCE was performed on November 14, 2012, that the claimant gave a self-limited reliable effort upon testing, and tested at a sedentary physical demand level. Dr. S noted in his narrative report and certified in a DWC-69, both dated November 21, 2012, that the claimant reached MMI on November 12, 2012. There is sufficient evidence to support Dr. S's certification of MMI of November 12, 2012. Accordingly, we render a new decision that the claimant reached MMI on November 12, 2012, per Dr. S's certification of MMI.

With regard to the IR, Dr. S assessed a 7% whole person impairment based on a 6% UE IR for loss of range of motion (ROM) of the right middle finger and a 6% UE IR for loss of ROM of the right wrist. However, we note that for the right wrist Dr. S found a 15° radial deviation and assigned a 1% UE impairment. Page 3/37 of 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) instructs that in measuring radial and ulnar deviation readings "[r]ound the figures to the nearest 10°." Radial deviation of 15° should either be rounded up to 20° for a 0% UE impairment, or down to 10° for a 2% UE impairment. See Figure 29, page 3/38. Dr. S's 1% UE impairment is incorrect. Dr. S did not properly apply the AMA Guides in assessing the claimant's IR; therefore, Dr. S's IR certification cannot be adopted. See APD 130342, decided April 3, 2013. Because there are no other certifications of IR in evidence that can be adopted, we remand the IR issue to the hearing officer for further action consistent with this decision.

SUMMARY

We reverse the hearing officer's determination that the compensable injury of [date of injury], extends to tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE, and we render a new decision that the compensable injury of [date of injury], does not extend to tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE.

We reverse the hearing officer's determination that the claimant reached MMI on January 10, 2013, and we render a new decision that the claimant reached MMI on November 12, 2012, per Dr. S's certification of MMI.

We reverse the hearing officer's determination that the claimant's IR is 17%, and we remand the IR issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. S is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. S is still qualified and available to be the designated doctor.

The hearing officer is to inform the designated doctor that the compensable injury of [date of injury], includes, as accepted by the carrier, a right hand and long finger contusion with avulsion fracture at the base of the proximal phalanx ulnar side of the long finger. The hearing officer is to inform the designated doctor that the compensable injury of [date of injury], does not include tenosynovitis of the right hand, ganglion cyst of the right hand, and CRPS/RSD (causalgia) of the right UE.

The hearing officer is to request that the designated doctor rate the entire compensable injury based on the claimant's condition as of the date of MMI, November 12, 2012. The designated doctor is to round ROM figures as required by the AMA Guides.

The parties are to be provided the correspondence to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the 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 **NEW HAMPSHIRE INSURANCE COMPANY** 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 78701-3232.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge