

APPEAL NO. 131902  
FILED SEPTEMBER 26, 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 19, 2013, with the record closing July 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 right knee moderate sprain of the mid portion of the anterior cruciate ligament, right knee complex tear extending into the posterior horn and body of the medial meniscus, right knee horizontal tear involving the body of the lateral meniscus, and right knee moderate sprain of the medial collateral ligament; (2) the compensable injury of [date of injury], does not extend to pain disorder associated with psychological factors and a general medical condition, depression, and anxiety; (3) the appellant (claimant) reached maximum medical improvement (MMI) on July 1, 2012; and (4) the claimant's impairment rating (IR) is seven percent.

The claimant appealed, disputing that portion of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], does not extend to pain disorder associated with psychological factors and a general medical condition, depression, and anxiety. The claimant also appealed the hearing officer's determinations of MMI and IR. The claimant contends that the appealed determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The respondent (carrier) responded, urging affirmance of the disputed determinations, contending the disputed determinations are fully supported by the evidence in the record and the law.

That portion of the hearing officer's determination that the compensable injury of [date of injury], extends to right knee moderate sprain of the mid portion of the anterior cruciate ligament, right knee complex tear extending into the posterior horn and body of the medial meniscus, right knee horizontal tear involving the body of the lateral meniscus, and right knee moderate sprain of the medial collateral ligament 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 on [date of injury], the claimant sustained a compensable injury that included at least a medial meniscus tear, an anterior cruciate ligament tear, and instability of the right knee. The claimant testified he injured his knee

when he stepped on a chain twisting his right knee. The claimant had surgery on his right knee on June 15, 2011.

## **EXTENT OF INJURY**

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

## **MMI/IR**

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.

There are four certifications of MMI/IR in evidence. The first certification was from [Dr. K], a doctor selected by the treating doctor to act in his place. Dr. K examined the claimant on October 20, 2010, and certified that the claimant reached MMI on that date with a zero percent IR. A CCH held on April 26, 2012, determined that the certification from Dr. K did not become final pursuant to Section 408.123 because it did not rate the entire compensable injury. Division records indicate that this decision was not appealed and has become final.

[Dr. P] was appointed designated doctor for the purposes of MMI/IR. Dr. P examined the claimant on June 4, 2012, and certified that the claimant reached MMI on June 4, 2012, and assigned a four 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). Dr. P assessed three percent impairment for instability of the

anterior cruciate ligament and one percent impairment for a partial medial meniscectomy. The hearing officer found that Dr. P's certification could not be adopted because it failed to rate the entire compensable injury as determined. That finding is supported by sufficient evidence.

Also in evidence is a certification of MMI/IR from [Dr. G], a doctor selected by the treating doctor to act in his place. Dr. G examined the claimant on April 10, 2013, and certified that the claimant reached MMI on December 18, 2012, with a nine percent IR. Dr. G assessed four percent impairment for partial medial and lateral meniscectomies in the right knee and five percent impairment for psychological impairment. As previously noted, the hearing officer's determination that the compensable injury does not extend to pain disorder associated with psychological factors and a general medical condition, depression, and anxiety was affirmed. Dr. G's certification cannot be adopted because it rates conditions that are not part of the compensable injury. See Appeals Panel Decision (APD) 122580, decided February 22, 2013.

The hearing officer correctly determined that the certifications from Dr. K, Dr. P and Dr. G could not be adopted. Accordingly, on May 6, 2013, the hearing officer completed a Request for Designated Doctor Examination (DWC-32) which is in evidence. The DWC-32 notes that Dr. P is no longer on the designated doctor list and states a new designated doctor is needed to provide a certification of an IR for all the following list of conditions: right knee medial meniscus tear, right knee anterior cruciate ligament tear, right knee instability, right knee moderate sprain of the medial collateral ligament, and right knee horizontal tear involving the body of the lateral meniscus. The DWC-32 additionally provides that the MMI date is June 4, 2012. The DWC-32 mistakenly lists June 4, 2012, as the statutory MMI date. [Dr. R] is appointed as the designated doctor for purposes of MMI/IR. Dr. R examined the claimant on June 19, 2013, and certified that the claimant reached MMI on June 4, 2012, with a seven percent IR using the AMA Guides. Dr. R states in her report that "[p]er DWC-32 Box 36, the MMI [d]ate has already been established as June 4, 2012." Dr. R assessed four percent impairment for a partial medial and lateral meniscectomy which she combined with three percent impairment assessed for mild residual ligament laxity. The hearing officer found that Dr. R certified that based on an MMI date of July 1, 2012, his IR is seven percent. However, a review of the record reflects that Dr. R certified that the MMI date was June 4, 2012, based on information provided by the hearing officer. No certification in evidence contains the July 1, 2012, MMI date determined by the hearing officer. Accordingly, the hearing officer's determination that the MMI date is July 1, 2012, is reversed.

The hearing officer provides in the decision and order that the parties stipulated that the claimant reached MMI on July 1, 2012. However, a review of the record does

not reflect that the parties stipulated to a date of MMI. Additionally, as previously mentioned no certification in evidence contains an MMI date of July 1, 2012.

Section 401.011(30) defines MMI as the earlier of: (A) 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; (B) the expiration of 104 weeks from the date on which income benefits begin to accrue (statutory); or (C) the date determined as provided by Section 408.104 (MMI after spinal surgery). Rule 124.7 pertaining to the initial payment of temporary income benefits provides in subsections (a) and (b) as follows:

- (a) As used in this section, the following terms have the following meanings, unless the context clearly indicates otherwise: “Accrual date” means the day an injured worker’s income benefits begin to accrue. “Day of disability” means a day when the worker is unable to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Intermittent days of disability shall be cumulated to calculate the accrual date.
- (b) An injured worker’s accrual date is the worker’s eighth day of disability.

It is not clear from the record exactly when the claimant’s disability began. However, the compensable injury date of [date of injury], and the claimant’s accrual date for income benefits could not have been earlier than June 22, 2010. Given the earliest possible accrual date, the date of statutory MMI for the claimant could not be earlier than June 19, 2012, which is the expiration of 104 weeks from the earliest date on which income benefits could have begun to accrue. There is no evidence to support the July 1, 2012, date of MMI determined by the hearing officer. Consequently, we reverse the hearing officer’s determination that the claimant reached MMI on July 1, 2012, and remand the MMI issue back to the hearing officer.

Because the date of MMI has not yet been determined, we reverse the hearing officer’s determination that the IR is seven percent and remand the IR issue to the hearing officer.

## **SUMMARY**

We affirm that portion of the hearing officer’s determination that the compensable injury does not extend to pain disorder associated with psychological factors and a general medical condition, depression, and anxiety.

We reverse the hearing officer's determination that the claimant reached MMI on July 1, 2012, and remand the MMI issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the IR is seven percent and remand the issue of IR to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

The hearing officer is to determine whether Dr. R is still qualified and available to be the designated doctor, and if so, to instruct Dr. R to certify the claimant's date of MMI (informing Dr. R of the correct statutory date and that the MMI date can be no later than the statutory date) and assess an IR based on the claimant's condition as of the MMI date certified by Dr. R, considering the medical record and the certifying examination in accordance with the AMA Guides. The hearing officer should see if the parties can stipulate to the date of statutory MMI applicable to this case, or if not, take evidence from the parties regarding the accrual date of disability so the hearing officer can determine the correct date of statutory MMI. The hearing officer should instruct Dr. R that the compensable injury extends to a medial meniscus tear, an anterior cruciate ligament tear, instability of the right knee, right knee moderate sprain of the mid portion of the anterior cruciate ligament, right knee complex tear extending into the posterior horn and body of the medial meniscus, right knee horizontal tear involving the body of the lateral meniscus, and right knee moderate sprain of the medial collateral ligament but does not extend to pain disorder associated with psychological factors and a general medical condition, depression, and anxiety. A copy of this certification is to be made available to the parties, and the parties are to be given an opportunity to respond. The hearing officer is then to make a determination on the issues of MMI and IR.

If Dr. R is no longer qualified or available to serve as the designated doctor then another designated doctor is to be appointed pursuant to Division rules to certify the claimant's MMI and assess an IR based on the certified date of MMI.

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 **WESTFIELD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CHARLES C. WILLIAMS  
555 REPUBLIC DRIVE, SUITE 450  
PLANO, TEXAS 75074.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge