

APPEAL NO. 132089  
FILED OCTOBER 14, 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 August 6, 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], does not extend to a disc protrusion at L4-5; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 18, 2013; and (3) the claimant's impairment rating (IR) is seven percent.

The claimant appealed all of the hearing officer's determinations. The claimant contends that she has not reached MMI, and that [Dr. S], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI, IR, and extent of injury, did not consider and rate the entire compensable injury. The claimant also points out that the hearing officer stated in the Background Information section of the decision and order that the respondent (carrier) accepted bladder incontinence as part of the compensable injury. The carrier responds, urging affirmance. The carrier also contends that it initially accepted bladder incontinence in a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) but had since disputed that condition.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The claimant testified that she was knocked down by a student and fell to the ground, landing on her left side. Although not stipulated to, it was undisputed by the parties that the carrier had accepted as compensable a left shoulder sprain/strain, a left hip sprain/strain, and a left wrist sprain/strain. Bladder incontinence was not discussed or actually litigated at the CCH.

**EXTENT OF INJURY AND MMI**

The hearing officer's determinations that the compensable injury does not extend to a disc protrusion at L4-5 and that the claimant reached MMI on January 18, 2013, are supported by sufficient evidence and are affirmed.

## IR

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.

Dr. S, the designated doctor, examined the claimant on February 4, 2013, and in a Report of Medical Evaluation (DWC-69) dated that same date certified the claimant reached clinical MMI on January 18, 2013, with a seven percent IR, based on range of motion (ROM) measurements taken of the claimant's left wrist, left shoulder, and left hip. 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. S assessed nine percent upper extremity (UE) impairment for the claimant's left shoulder and zero percent impairment for the claimant's left hip. Dr. S also assessed three percent UE impairment for the claimant's left wrist. However, we note that Dr. S improperly utilized Figure 29 on page 3/38 of the AMA Guides in assessing three percent impairment for the claimant's left wrist. Dr. S measured 15 degrees of radial deviation and assessed one percent impairment; Dr. S failed to round the measurements of radial deviation of the wrist to the nearest 10 degrees to determine the UE impairment. Figure 29 on page 3/38, which is used to rate impairment based upon these measurements, uses increments of 5 degrees, whereas the general directions on page 3/37 state to round the measurements of radial deviation to the nearest 10 degrees. This conflict is resolved by looking to the general directions of interpolating, measuring, and rounding off which are found on page 2/9 of the AMA Guides and which provide as follows in relevant part:

In general, an impairment value that falls between those appearing in a table or figure of the *Guides* may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions.

Here the AMA Guides do give other directions than applying the values given in Figure 29 on page 3/38. Those directions on page 3/37 provide that the measurements be rounded to the nearest 10 degrees. Using the language cited above from page 2/9 of the AMA Guides, these directions control over Figure 29 and should have been applied in calculating the claimant's IR. See Appeals Panel Decision (APD) 022504-s, decided November 12, 2002; APD 111384, decided November 23, 2011. See also APD

131541, decided August 29, 2013. Because the designated doctor did not properly apply the AMA Guides in assessing the claimant's IR, we must reverse the decision of the hearing officer adopting the designated doctor's IR.

There are no other MMI/IR certifications in evidence. Therefore, we remand the issue of 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 a disc protrusion at L4-5.

We affirm the hearing officer's determination that the claimant reached MMI on January 18, 2013.

We reverse the hearing officer's determination that the claimant's IR is seven percent, and we remand the issue of IR 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. If Dr. S 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 advise the designated doctor that the date of MMI is January 18, 2013, and that the carrier has accepted as compensable a left shoulder sprain/strain, a left wrist sprain/strain, and a left hip sprain/strain. The hearing officer is also to advise the designated doctor that the compensable injury does not extend to a disc protrusion at L4-5 as administratively determined. The hearing officer is to request the designated doctor to rate the compensable injury as of the date of MMI, which is January 18, 2013, in accordance with the AMA Guides considering the medical record and the certifying examination.

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 the claimant's IR for the [date of injury], compensable injury as of the MMI date of January 18, 2013.

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 **HARTFORD INSURANCE COMPANY OF THE MIDWEST** 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.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge