

APPEAL NO. 132173  
FILED NOVEMBER 8, 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 8, 2013,<sup>1</sup> and continued on July 24, 2013, with the record closing on August 9, 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 L5, S1, S2, and S4 radiculopathy, neurogenic bladder, and cauda equina syndrome;<sup>2</sup> (2) the compensable injury of [date of injury], does not extend to bowel dysfunction or erectile dysfunction; (3) the appellant (claimant) reached maximum medical improvement (MMI) on November 2, 2011; and (4) the claimant's impairment rating (IR) is 10%. The claimant appealed, disputing the hearing officer's determinations of MMI and IR as well as the hearing officer's determination that the compensable injury does not extend to bowel dysfunction or erectile dysfunction.

The claimant contends that the 10% IR does not rate the entire compensable injury and contends that injured workers who sustain injuries to the spine should receive impairment for both musculoskeletal damage and neurological damage. The respondent (carrier) responded, urging affirmance of the disputed determinations.

The hearing officer's determinations that the compensable injury of [date of injury], extends to L5, S1, S2, and S4 radiculopathy, neurogenic bladder, and cauda equina syndrome and that the claimant reached MMI on November 2, 2011, were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated in part that: (1) [Dr. R], the designated doctor, was appointed by the Division to determine MMI and IR; (2) the claimant has been diagnosed with the medical conditions at issue in the CCH. The claimant had emergency surgery to his spine on July 7, 2011. The operative procedure was described as bilateral L4-5 laminectomy with decompression of nerve roots including

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<sup>1</sup> The hearing officer's decision and order states that a letter of clarification (LOC) was forwarded to the designated doctor after the initial hearing on February 14, 2013. Texas Department of Insurance, Division of Workers' Compensation (Division) records reflect that no CCH was held on February 14, 2013, because only one interpreter showed up for two CCHs that were set at the same time and needed interpretation.

<sup>2</sup> We note that throughout the hearing officer's decision and order cauda equina syndrome is misspelled as cauda equine syndrome.

partial facetectomy, foraminotomy, and excision of herniated nucleus pulposus of one lumbar level.

## **EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of [date of injury], does not extend to bowel dysfunction or erectile dysfunction is supported by sufficient evidence and is 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. 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. As previously noted, the parties stipulated that the claimant reached MMI on November 2, 2011.

There are multiple certifications in evidence from Dr. R, the designated doctor, and two alternative certifications from the carrier-selected required medical examination doctor, [Dr. K]. Both Dr. R and Dr. K assessed a 10% 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). The hearing officer found that Dr. R's assigned IR is supported by a preponderance of the evidence and was performed in accordance with the AMA Guides and that Dr. K's rating of 10% was made in accordance with the AMA Guides and is supported by a preponderance of the evidence.

In a narrative report dated April 2, 2012, Dr. R stated he was assessing a 10% IR, based on Lumbosacral Diagnosis-Related Estimate (DRE) Category III: Radiculopathy. Dr. R stated that he would like to obtain an EMG and nerve conduction studies of both lower extremities to determine if the claimant has permanent impairment of the musculature of both legs as well as a urinary cystometrogram to rule out traumatic bladder dysfunction secondary to his herniated disc. Dr. R noted that the claimant has been having some urinary dysfunction and upon receipt of the additional studies would determine whether the claimant's IR should be changed and elevated. As previously noted, the hearing officer's determination that the compensable injury of [date of injury], extends to L5, S1, S2, and S4 radiculopathy, neurogenic bladder, and

cauda equina syndrome has become final. The 10% IR certified by Dr. R does not rate the neurogenic bladder. Therefore, the 10% IR certified by Dr. R cannot be adopted because it does not rate the entire compensable injury.

Similarly, Dr. K notes in his narrative report that the 10% IR assessed is based only on a lumbar herniated disc with radiculopathy. The 10% IR assessed by Dr. K does not rate the neurogenic bladder and cannot be adopted because it does not rate the entire compensable injury. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 10%.

Both Dr. K and Dr. R provide alternative certifications of 60% with an MMI date of November 2, 2011, placing the claimant in Lumbosacral DRE Category VII: Cauda Equina Syndrome with Bowel or Bladder Impairment. Lumbosacral DRE Category VII provides the following description and verification in part: cauda equina-like syndrome as defined in category VI is present, and the patient has bowel and bladder involvement requiring an assistive device. There was some evidence that the claimant had been treated for his neurogenic bladder with medication but there was no evidence that he required "an assistive device." Accordingly, the claimant did not meet the criteria set forth in the AMA Guides for Lumbosacral DRE Category VII and the 60% IR cannot be adopted.

In a response dated August 30, 2012, to an LOC, Dr. R stated that in his opinion prescribed medication could be interpreted as an assistive device and declined to change his assessment of the claimant's IR from 60%. Subsequently, a second LOC was sent to Dr. R, which stated that medication is not considered an assistive device which would allow the utilization of Lumbosacral DRE Category VII. The LOC suggested that Dr. R consider impairment for urinary bladder dysfunction in Chapter 4.3d, Table 17 on page 4/149, of the AMA Guides. Dr. R responded to the LOC in correspondence dated April 24, 2013. Dr. R amended his assigned IR to 55%, placing the claimant in Lumbosacral DRE Category VI: Cauda Equina-like Syndrome Without Bowel or Bladder Signs for an impairment of 40%. Dr. R then combined the 40% impairment with 25% impairment assessed using Table 17 on page 4/149, of the AMA Guides.

Lumbosacral DRE Category VI provides in part, that patients in this category do not have objectively demonstrated bowel or bladder impairment. Table 17 provides that the patient has poor bladder reflex activity, intermittent dribbling, and no voluntary control to be placed in the category which allows for a range of impairment between 25% and 39%. Dr. R in his narrative report stated that the claimant's bladder had poor reflex activity but was not found to have severe enough levels to meet the AMA Guides criteria for Lumbosacral Category VII: Cauda Equina Syndrome with Bowel or Bladder

Impairment or the most severe criteria contained in Table 17 in which the patient has no reflex or voluntary control of bladder. Dr. R noted that the claimant has limitations on voluntary control but did not state that the claimant has no voluntary control. The medical evidence in the record does not reflect that the claimant has no voluntary control. We note that Lumbosacral DRE Category VI provides impairment for patients who do not have objectively demonstrated bowel or bladder impairment. However, Dr. R placed the claimant in this category but also assessed impairment for urinary bladder dysfunction using Table 17. Dr. R assessed impairment for urinary bladder dysfunction, placing the claimant in a category based on criteria including no voluntary control which neither the medical evidence or Dr. R states applies to the claimant. The 55% IR assessed by Dr. R cannot be adopted because the claimant does not meet the criteria described in the AMA Guides.

There is no other IR in evidence that can be adopted. Since no IR can be adopted, we remand the IR issue 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 bowel dysfunction or erectile dysfunction.

We reverse the hearing officer's determination that the claimant's IR is 10% and remand the IR issue to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. R is the designated doctor. On remand, the hearing officer is to determine whether Dr. R is still qualified and available to be the designated doctor. If Dr. R 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 compensable injury of [date of injury].

The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], extends to L5, S1, S2, and S4 radiculopathy, neurogenic bladder, and cauda equina syndrome but does not extend to bowel dysfunction or erectile dysfunction. We note that the AMA Guides provide on page 3/100 that to express a spine impairment and a bladder impairment, or any other combination of organ system impairments, as an impairment of the whole person, the whole-person impairment estimates for the respective organ systems should be combined using the Combined Values Chart (page 322).

The hearing officer is then to request that the designated doctor assign an IR for the claimant's compensable injury of [date of injury], based on the claimant's condition as of November 2, 2011, the MMI date, considering the claimant's medical record and the certifying examination and in accordance with Rule 130.1(c)(3).

The parties are to be provided with the hearing officer's letter to the designated doctor and the designated doctor's response. The parties are to be allowed an opportunity to respond. The hearing officer is then to make a determination on IR supported by the evidence and 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 Appeals Panel Decision 060721, decided June 12, 2006.

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, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge