

APPEAL NO. 132413  
FILED DECEMBER 6, 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 August 30, 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 the cervical spine C5-6 disc level, cervical radiculopathy, complex regional pain syndrome/reflex sympathetic dystrophy (CRPS/RSD), post-traumatic stress disorder, and left biceps tear; (2) the appellant's (claimant) date of maximum medical improvement (MMI) is May 3, 2012; and (3) the claimant's impairment rating (IR) is 12%. The claimant appealed, disputing the hearing officer's determinations regarding extent of injury and MMI/IR, specifically contending that [Dr. S] certification of MMI/IR is incorrect because he considered the contralateral side as a comparison in calculating the right shoulder range of motion (ROM) impairment. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

**DECISION**

Affirmed in part, and reversed and rendered in part.

The parties stipulated that: (1) the Texas Department of Insurance, Division of Workers' Compensation (Division) selected [Dr. O] as the designated doctor with regard to MMI/IR; (2) Dr. O certified that the claimant reached MMI on May 3, 2012, with a 34% IR; (3) the compensable injury includes at least a cervical spine sprain/strain, a thoracic spine sprain/strain, and a right shoulder rotator cuff tear; and (4) the date of statutory MMI is May 3, 2012. The claimant testified that she was injured while working as an emergency medical technician and the gurney she was using to transport a patient suddenly collapsed. The claimant was pulled downward and felt immediate pain to her right side.

**EXTENT OF INJURY**

The hearing officer's determination that the [date of injury], compensable injury does not extend to the cervical spine C5-6 disc level, cervical radiculopathy, CRPS/RSD, post-traumatic stress disorder, and left biceps tear is supported by sufficient evidence and is affirmed.

**MMI**

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 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.

The hearing officer determined that the claimant reached MMI on May 3, 2012, with a 12% IR in accordance with Dr. S’s certification. Dr. S, the required medical examination doctor, examined the claimant on August 29, 2012, and in a Report of Medical Evaluation (DWC-69) and narrative certified that the claimant reached clinical MMI on April 27, 2011 (not May 3, 2012, as recited by the hearing officer in his Background Information, Finding of Fact No. 6, Conclusion of Law No. 4, and Decision) with a 12% IR. In his narrative report, Dr. S stated: “[t]he [claimant] reached [MMI] within six months of her right shoulder surgery which would place her at MMI date of [April 27, 2011]. There has been no material change in the [claimant’s] status.” Dr. S assigned a 12% IR based on Diagnosis-Related Estimate Cervicothoracic Category II: Minor Impairment: clinical signs of neck injury are present without radiculopathy or loss of motion segment integrity for a 5% impairment, and assigned 7% impairment based on ROM of the right shoulder after using the contralateral side as a comparison.

The hearing officer in Finding of Fact No. 6 found that Dr. S’s certification is supported by a preponderance of the evidence. This finding is supported by sufficient evidence and is affirmed. However, the evidence reflects that Dr. S certified that the claimant reached MMI on April 27, 2011, not May 3, 2012. The only certification in the record that certifies that the claimant reached MMI on May 3, 2012, is by Dr. O. The hearing officer discusses Dr. O’s certification in his Background Information section as follows: “[Dr. O] certified that [the claimant] reached statutory MMI on May 3, 2012, with a 34% IR. The IR of the [designated doctor] cannot be adopted because he rated conditions not included in the compensable injury, as determined administratively.” Additionally, in Finding of Fact No. 5, the hearing officer found that Dr. O’s assigned IR is contrary to the preponderance of the evidence. This finding is supported by sufficient evidence and is affirmed.

The hearing officer is clear in his decision that he found Dr. S’s certification of MMI was supported by a preponderance of the evidence, and mistakenly determined that the claimant reached MMI on May 3, 2012, rather than on April 27, 2011, which is the MMI date Dr. S actually certified. Accordingly, we reverse the hearing officer’s determination that the claimant reached MMI on May 3, 2012, as being unsupported by the evidence, and we render a new decision that the claimant reached MMI on April 27, 2011.

## **IR**

The hearing officer's determination that the claimant's IR is 12% is supported by sufficient evidence and is affirmed. The claimant contends on appeal that the IR by Dr. S was improperly calculated because in assessing the right shoulder ROM impairment, Dr. S used the contralateral side as a comparison. However, the Appeals Panel has held that there is no provision in 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) which require or prohibit that method and it is in the discretion of the certifying doctor to do so or not. See Appeals Panel Decision 120897, decided July 10, 2012.

## **SUMMARY**

We affirm the hearing officer's determination that the [date of injury], compensable injury does not extend to the cervical spine C5-6 disc level, cervical radiculopathy, CRPS/RSD, post-traumatic stress disorder, and left biceps tear.

We reverse the hearing officer's determination that the claimant reached MMI on May 3, 2012, and we render a new decision that the claimant reached MMI on April 27, 2011.

We affirm the hearing officer's determination that the claimant's IR is 12%.

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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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge