

APPEAL NO. 132514
FILED DECEMBER 17, 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 September 11, 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 extend to cervical spine at C3-4 protrusion and central annular tear, C5-6 disc protrusion, C6-7 disc protrusion, and cervical radiculopathy; (2) the respondent (claimant) had disability beginning on April 1, 2013, and continuing through the date of the CCH; (3) the claimant has not reached maximum medical improvement (MMI); and (4) no impairment rating (IR) can be assigned because the claimant has not reached MMI.

The appellant (carrier) appeals the hearing officer's determinations of the extent of the compensable injury, disability, MMI and IR. The carrier contends that the evidence was not sufficient to establish that the disputed conditions were part of the compensable injury and contends that the correct MMI date was December 20, 2012, and the correct IR is zero percent as certified by the Texas Department of Insurance, Division of Workers' Compensation designated doctor, [Dr. U]. The carrier argues that the disability determination is not supported by the evidence. The carrier also argues that it did not stipulate that the treating doctor, [Dr. W] certified on April 1, 2013, that the claimant had not reached MMI. The claimant responded, urging affirmance of the determinations disputed by the carrier.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The parties stipulated that the claimant sustained a compensable injury at least in the form of a right shoulder sprain/strain on [date of injury]. The hearing officer's determinations that: (1) the compensable injury of [date of injury], does extend to

cervical spine at C3-4 protrusion and central annular tear, C5-6 disc protrusion, C6-7 disc protrusion, and cervical radiculopathy; (2) the claimant had disability beginning on April 1, 2013, and continuing through the date of the CCH; (3) the claimant has not reached MMI; and (4) no IR can be assigned because the claimant has not reached MMI are supported by sufficient evidence and are affirmed.

However, the carrier correctly notes in its appeal that it did not stipulate that the claimant's treating doctor, Dr. W certified on April 1, 2013, that the claimant had not reached MMI. A review of the record reflects that the parties did not agree to that stipulation although it was included in the hearing officer's decision and order as a stipulation. Accordingly, we reform the hearing officer's Finding of Fact No. 1. F. by striking that stipulation because the parties did not agree to the facts contained therein on the record.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge