

APPEAL NO. 132783
FILED JANUARY 21, 2014

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 October 11, 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 extend to a right wrist triangular fibrocartilage tear; (2) the appellant's (claimant) date of maximum medical improvement (MMI) is June 12, 2013; and (3) the claimant's impairment rating (IR) is four percent. The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The claimant contends that the hearing officer's determinations of MMI and IR 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 MMI and IR determinations.

The hearing officer's determination that the [date of injury], compensable injury extends to a right wrist triangular fibrocartilage tear 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 and that the carrier has accepted a [date of injury], compensable injury in the nature of a right wrist strain. As previously noted the hearing officer's determination that the [date of injury], compensable injury extends to a right wrist triangular fibrocartilage tear has become final. The claimant testified she injured her right wrist when working as a machine operator for employer.

MMI

The hearing officer's determination that the claimant's date of MMI is June 12, 2013, 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 Texas Department of Insurance, Division of Workers' Compensation (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.

The evidence reflects that [Dr. D] was appointed by the Division for purposes of MMI and IR. Dr. D examined the claimant on July 18, 2013, and certified that the claimant reached MMI on June 12, 2013, and assessed 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. D noted in his narrative report of July 18, 2013, that "the contralateral uninvolved joint served as a comparative standard against which the impaired joint was measured, as the uninvolved joint did not meet the AMA standard norms. Therefore, the [range of motion] (ROM) degrees used to calculate the impairment were adjusted to accommodate for the comparative standard." Based on his attached worksheets, Dr. D applied the adjusted ROM measurements obtained for the right wrist and assessed impairment using Figure 26 on page 3/36 of the AMA Guides. Dr. D noted that the ROM measurements resulted in six percent upper extremity (UE) impairment.

In the attached worksheet, Dr. D reported the following ROM measurements: flexion 44°; extension +47°; radial deviation 19°; and ulnar deviation +35°. Dr. D correctly noted that the ROM measurements taken for both radial and ulnar deviation did not result in any impairment. Dr. D assessed three percent UE impairment for loss of motion for extension and three percent impairment for loss of motion for flexion, using Figure 26 on page 3/36 of the AMA Guides. The instructions for assessing impairment for loss of ROM for flexion and extension stated that the measurements are to be rounded to the nearest 10°. The instructions go on to state that Figure 26 is to be used to match the measured angles of flexion and of extension to the corresponding impairments for flexion and extension. The impairments for flexion and extension are then to be added to obtain the percent of UE impairment. Dr. D assessed three percent impairment for loss of ROM of extension of the right wrist. However, rounding the loss of ROM of extension to the nearest 10° would result in either two percent impairment or four percent impairment. Figure 26 does not provide for three percent impairment for any measurement for loss of ROM of extension for the right wrist which has been rounded to the nearest 10°.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of

combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. However, in the case on appeal, Dr. D's four percent IR cannot be corrected. As previously discussed, Dr. D failed to round the measurements of extension of the right wrist to the nearest 10° to determine the UE impairment. Rounding the measurements of extension to derive the correct UE impairment requires medical judgment or discretion, so we cannot recalculate the correct IR using Dr. D's figures. Accordingly, we reverse the hearing officer's determination that the claimant IR is four percent. No other certification with an MMI date of June 12, 2013, is in evidence. Accordingly, 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 claimant's date of MMI is June 12, 2013.

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

REMAND INSTRUCTIONS

Dr. D is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. D is still qualified and available to be the designated doctor.

The hearing officer is to inform the designated doctor that the compensable injury of [date of injury], includes, as accepted by the carrier, a right wrist strain and as administratively determined a right wrist triangular fibrocartilage tear.

The hearing officer is to request that the designated doctor rate the entire compensable injury based on the claimant's condition as of the date of MMI, June 12, 2013. The designated doctor is to round ROM figures as required by the AMA Guides.

The parties are to be provided the correspondence to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the IR 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge