

APPEAL NO. 140142
FILED MARCH 13, 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 December 11, 2013, in [City], Texas, with [hearing officer] presiding as the 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 strain/sprain and medial meniscus tear of the left knee; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 12, 2012; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed the hearing officer's determinations of the extent of the compensable injury, MMI, and IR. The claimant argued that the evidence supports his assertion that the injury extends to a strain/sprain and medial meniscus tear of the left knee and that he has not reached MMI and an IR is premature. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that: (1) the claimant sustained a compensable injury on [date of injury]; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. C] as the designated doctor on the issues of extent of injury, MMI, and IR.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to a strain/sprain and medial meniscus tear of the left knee is supported by sufficient evidence and is affirmed.

MMI/IR

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.

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.

The hearing officer determined that the claimant reached MMI on November 12, 2012, and that the claimant's IR is zero percent as certified by Dr. C, the designated doctor. Dr. C first examined the claimant on March 6, 2013, and certified that the claimant reached MMI on November 12, 2012, with a zero percent IR for a "left knee injury/strain" and a "left partial tear medial hamstring." However, the hearing officer determined that the compensable injury does not extend to a left knee strain/sprain. As discussed above, the hearing officer's determination that the compensable injury does not extend to a left knee strain/sprain has been affirmed. Dr. C rated a condition that is not a part of the compensable injury, and as such it cannot be adopted. See Appeals Panel Decision (APD) 110463, decided June 13, 2011; and APD 101567, decided December 20, 2010. Accordingly, the hearing officer's determinations that the claimant reached MMI on November 12, 2012, and the claimant's IR is zero percent are reversed.

Dr. C also examined the claimant on August 7, 2013, to provided an alternate certification that included a medial meniscus tear. Dr. C again placed the claimant at MMI on November 12, 2012, with a zero percent IR that included a left medial meniscus tear of the knee, left knee sprain/strain, and left partial tear of the medial hamstring. Because we affirmed the hearing officer's determination that the compensable injury does not extend to a strain/sprain and medial meniscus tear of the left knee, this certification cannot be adopted.

The only other MMI/IR examination in evidence is from [Dr. M], the doctor selected by the treating doctor to act in place of the treating doctor. Dr. M examined the claimant on October 2, 2013, and determined that the claimant had not yet reached MMI, concluding that "the meniscal tear IS part of the compensable injury and that [the claimant] has NOT been afforded the opportunity for additional care to improve his current status." Since we affirmed the hearing officer's determination that the compensable injury does not extend to a medial meniscus tear of the left knee, we cannot find that the claimant is not at MMI based on Dr. M's examination.

Since there is no certification of MMI and IR in evidence that can be adopted, we remand the issues of MMI and 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 strain/sprain and medial meniscus tear of the left knee.

We reverse the hearing officer's determinations that the claimant reached MMI on November 12, 2012, and that the claimant's IR is zero percent and remand the issues of MMI and IR to the hearing officer.

REMAND INSTRUCTIONS

Dr. C is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. C is still qualified and available to be the designated doctor. If Dr. C is no longer qualified or is no longer available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the [date of injury], compensable injury.

The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], does not extend to a strain/sprain and medial meniscus tear of the left knee. We note that it is undisputed that the compensable injury includes a partial tear of the left medial hamstring. The hearing officer is to request that the designated doctor give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with 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) considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on MMI and 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, 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 **ZENITH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201-4234.**

Tracey T. Guerra
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge