

APPEAL NO. 140166
FILED MARCH 28, 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 March 22, 2013, with the record closing on December 2, 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 thoracic sprain/strain, headaches, cervical spine [right side] and thoracic spine; (2) the compensable injury of [date of injury], does not extend to chronic pain to the buttocks, bulges at C2-3 and C6-7, bulges at L4-5, lumbar radiculopathy, and aggravation of depression; (3) the respondent (claimant) reached maximum medical improvement (MMI) on September 13, 2012; and (4) the claimant's impairment rating (IR) is 10%.

The appellant (carrier) specifically appealed the hearing officer's determination that the compensable injury extends to cervical spine [right side] and thoracic spine. The carrier contends that the decision should identify the specific diagnoses found to be compensable rather than describe body parts. The carrier does not appeal the hearing officer's determination that the compensable injury extends to thoracic sprain/strain and headaches. The carrier also appeals the hearing officer's MMI and IR determinations. The carrier contends that the preponderance of the evidence supports the MMI/IR certification of [Dr. P], the first designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI and IR. The appeal file does not contain a response from the claimant to the carrier's appeal. The hearing officer's determinations that the compensable injury of [date of injury], extends to thoracic sprain/strain and headaches, and that the compensable injury of [date of injury], does not extend to chronic pain to the buttocks, bulges at C2-3 and C6-7, bulges at L4-5, lumbar radiculopathy, and aggravation of depression have not been appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], at least in the form of a cervical sprain/strain, lumbar sprain/strain, and left hip sprain/strain. The claimant testified she was injured when she fell and landed onto a U-bolt.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], extends to cervical spine [right side] and thoracic spine is supported by sufficient evidence and is affirmed.

MMI/IR

The hearing officer determined that the claimant reached MMI on September 13, 2012, with a 10% IR per [Dr. B], the second designated doctor appointed by the Division to determine MMI and IR.

Dr. B initially examined the claimant on July 12, 2013, and certified that the claimant reached MMI on September 13, 2012, with a 10% IR. In a narrative report dated July 12, 2013, Dr. B noted diagnoses of cervical sprain/strain, lumbar sprain/strain, and left hip sprain/strain. 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. B assessed 0% impairment based on range of motion (ROM) measurements of the claimant's left hip. Dr. B placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category II: Minor Impairment for 5% impairment, and DRE Lumbosacral Category II: Minor Impairment for 5% impairment, for a total IR of 10%. We note that Dr. B did not consider or rate headaches or the claimant's thoracic spine.

The hearing officer sent a letter of clarification to Dr. B, requesting clarification "as to the rating, if ratable, for the headaches, thoracic sprain/strain, and thoracic spine." In a response dated August 25, 2013, Dr. B noted that in his original report dated July 12, 2013, that "[t]he diagnosis of thoracic sprain/strain, thoracic spine . . . and headaches . . . do not meet the temporal relationship established by the [Official Disability Guidelines-Treatment in Workers' Compensation published by Work Loss Data Institute (ODG)] as the only absolutely essential criterion." Dr. B then stated that: "I state in the original report they [headaches, thoracic sprain/strain, and thoracic spine] do not meet the ODG for a temporal relationship to the injury and thus are not ratable." It is clear from Dr. B's response that he did not rate headaches, a thoracic sprain/strain, or thoracic spine because he did not believe the compensable injury included headaches, a thoracic sprain/strain, or thoracic spine. However, because the hearing officer's determination that the compensable injury of [date of injury], extends to thoracic sprain/strain and headaches has become final, and the hearing officer's determination that the compensable injury of [date of injury], extends to the thoracic spine has been affirmed, Dr. B did not consider and rate the entire compensable injury, and as such

neither of his MMI/IR certifications can be adopted. See Appeals Panel Decision (APD) 110463, decided June 13, 2011; and APD 101567, decided December 20, 2010.

Dr. P, the first designated doctor, examined the claimant on June 6, 2012, and certified that the claimant reached MMI on May 1, 2012, with a 4% IR. Dr. P noted in his narrative report dated June 6, 2012, that the accepted injuries are sprains of the cervical spine, left hip, and lumbar spine. Dr. P placed the claimant in DRE Cervicothoracic Category I: Complaints or Symptoms for 0% impairment, and DRE Lumbosacral Category I: Complaints or Symptoms for 0% impairment. Dr. P assessed 4% impairment based on ROM measurements taken of the claimant's left hip. Dr. P did not consider or rate headaches, a thoracic sprain/strain, or thoracic spine, which have been determined to be part of the compensable injury. Therefore, Dr. P's MMI/IR certification cannot be adopted.

[Dr. A], a doctor selected by the treating doctor to act in place of the treating doctor, examined the claimant on September 13, 2012, and certified that the claimant reached MMI on that same date with a 10% IR. In his narrative report dated September 13, 2012, Dr. A noted impressions of cervical sprain, lumbar sprain, and thoracic sprain. Regarding the claimant's IR, Dr. A stated:

1. Using the [AMA Guides] [T]able 72 DRE [Lumbosacral] [C]ategory [II] 5%, [T]able 73 DRE [Cervicothoracic] [C]ategory [II] 5%
2. [The claimant] has total of 10% whole person impairment.

Dr. A did not provide a rating for the thoracic spine. Additionally, Dr. A did not consider and rate headaches, which has been determined to be part of the compensable injury, or a left hip strain/sprain, which the parties stipulated was part of the compensable injury. Accordingly, Dr. A's MMI/IR certification cannot be adopted.

[Dr. W], a doctor selected by the treating doctor to act in place of the treating doctor, examined the claimant on March 20, 2013, and certified that the claimant reached MMI on May 7, 2012, with a 10% IR. In his narrative report dated March 20, 2013, Dr. W noted that the compensable injuries were cervical sprain/strain and lumbosacral sprain/strain. Dr. W placed the claimant in DRE Lumbosacral Category II: Complaints or Symptoms for 5% impairment, and in DRE Cervicothoracic Category II: Complaints or Symptoms for 5% impairment. Dr. W did not consider and rate headaches, a thoracic sprain/strain, thoracic spine, or the claimant's left hip, all of which are part of the compensable injury. Accordingly, Dr. W's MMI/IR certification cannot be adopted.

As there is no MMI/IR certification 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], extends to cervical spine [right side] and thoracic spine.

We reverse the hearing officer's determinations that the claimant reached MMI on September 13, 2012, with a 10% IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. B is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. B is still qualified and available to be the designated doctor. If Dr. B is no longer qualified or available, 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 notify the designated doctor that the compensable injury of [date of injury], extends to thoracic sprain/strain, headaches, cervical spine [right side], and thoracic spine as administratively determined, as well as a cervical sprain/strain, a lumbar sprain/strain, and a left hip sprain/strain as stipulated to by the parties. The hearing officer is to further advise the designated doctor that the compensable injury of [date of injury], does not extend to chronic pain to the buttocks, bulges at C2-3 and C6-7, bulges at L4-5, lumbar radiculopathy, and aggravation of depression as administratively determined.

The hearing officer is to request the designated doctor to give an opinion on the claimant's MMI and to rate the entire compensable injury in accordance with the AMA Guides 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 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 **ARCH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201-4284.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Tracey T. Guerra
Appeals Judge

Margaret L. Turner
Appeals Judge