

APPEAL NO. 140402  
FILED MAY 22, 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 (CCH) was held on November 12, 2013, with the record closing on February 7, 2014, 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 extends to a right knee acute chondral defect of the medial femoral condyle and pain disorder associated with both psychological factors and a general medical condition; (2) the [date of injury], compensable injury does not extend to a right knee partial anterior cruciate ligament (ACL) tear, anxiety disorder, and depression; (3) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on December 23, 2013; and (4) the claimant's impairment rating (IR) is one percent.

The claimant appealed the hearing officer's determinations that he reached MMI on December 23, 2013, with a one percent IR and that the compensable injury does not extend to a right knee partial ACL tear, anxiety disorder, and depression. The claimant contends that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The respondent/cross-appellant (carrier) responded, urging affirmance of the determinations disputed by the claimant. The carrier also appealed, disputing the hearing officer's determinations that the compensable injury extends to a right knee acute chondral defect of the medial femoral condyle and pain disorder associated with both psychological facts and a general medical condition. The carrier also contends that the correct date of MMI is June 7, 2013,<sup>1</sup> and the claimant's correct IR is one percent as certified by the required medical examination (RME) doctor, [Dr. S]. The appeal file did not contain a response from the claimant to the carrier's cross-appeal.

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

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<sup>1</sup> We note that the carrier later in its appeal states that Dr. S certified the claimant reached MMI on May 7, 2013, and asserts that the claimant's correct date of MMI is May 7, 2013.

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 does not affect the outcome of the hearing. This is a case involving an error at the CCH that requires correction but does not affect the outcome of the hearing.

The claimant testified that he was injured when he was trying to bring down a file cabinet that was stacked on top of another cabinet and it fell striking him on his right knee.

### **EXTENT OF INJURY**

The hearing officer's determination that the [date of injury], compensable injury extends to a right knee acute chondral defect of the medial femoral condyle and pain disorder associated with both psychological factors and a general medical condition is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the [date of injury], compensable injury does not extend to a right knee partial ACL tear, anxiety disorder, and depression is supported by sufficient evidence and is affirmed.

### **REFORMATION OF FINDINGS OF FACT**

The parties stipulated that the compensable injury includes at least a right knee medial meniscus tear, right knee contusion, and a right knee sprain/strain. As previously noted, the hearing officer's determination that the compensable injury extends to a right knee acute chondral defect of the medial femoral condyle and pain disorder associated with both psychological factors and a general medical condition is affirmed.

The hearing officer in Finding of Fact No. 3 found that the Texas Department of Insurance, Division of Workers' Compensation (Division) selected Dr. S as its designated doctor with regard to MMI, IR, and ability to return to work. However, the evidence reflects that [Dr. H] was the designated doctor initially selected by the Division for purposes of MMI, IR, and ability to return to work. The evidence reflects that Dr. S was the carrier-selected post-designated doctor RME doctor. We reform Finding of Fact No. 3 to reflect Dr. H was selected by the Division as the designated doctor for purposes of MMI, IR, and ability to return to work.

In Finding of Fact No. 4, the hearing officer again misidentified Dr. S as the designated doctor, and found that Dr. S certified that the claimant reached MMI on June 7, 2013, with a one percent IR. However, the evidence reflects that Dr. S actually

certified that the claimant reached MMI on May 7, 2013, with a one percent IR. We reform Finding of Fact No. 4 to reflect Dr. S, the carrier-selected RME doctor, certified the claimant reached MMI on May 7, 2013, with a one percent IR.

In Finding of Fact No. 7, the hearing officer again misidentified Dr. S as the designated doctor and mistakenly recited that the certification of MMI by Dr. S was June 7, 2013, rather than the MMI date he actually certified of May 7, 2013. We reform Finding of Fact No. 7 to reflect Dr. S was the carrier-selected RME doctor and the certification of MMI from Dr. S was May 7, 2013, not June 7, 2013.

In Finding of Fact No. 8, the hearing officer found that following the CCH he ordered a re-examination on the MMI and IR issues on this claim, which resulted in the appointment of [Dr. M] as the successor designated doctor to Dr. S on these issues. As previously noted Dr. S was the RME doctor rather than the first designated doctor. We reform Finding of Fact No. 8 to reflect Dr. M was appointed as the successor designated doctor to Dr. H. The hearing officer correctly found that Dr. M certified the claimant reached MMI on December 23, 2013, with an IR of one percent.

### **MMI/IR**

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.

There were three certifications of MMI/IR in evidence. Dr. H, the first designated doctor examined the claimant on May 16, 2013, and certified that the claimant reached MMI on April 19, 2013, with 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). The IR was based on range of motion (ROM) measurements of the claimant's right knee. The only diagnoses contained in Dr. H's narrative report were a sprain/strain of the right knee and a right knee contusion. Dr. H did not consider or rate a right knee medial meniscus tear, a right knee acute chondral defect of the

medial femoral condyle or pain disorder associated with both psychological factors and a general medical condition. Dr. H's certification that the claimant reached MMI on April 19, 2013, with a four percent IR does not rate the entire compensable injury and cannot be adopted.

Dr. S, the carrier-selected RME doctor, examined the claimant on August 12, 2013, and certified that the claimant reached MMI on May 7, 2013, with a one percent IR. Dr. S assessed one percent IR using Table 64 on page 3/85 of the AMA Guides for a partial medial meniscectomy. Dr. S invalidated the claimant's ROM due to guarding and significant voluntary restriction. In his narrative report, Dr. S listed the following diagnoses: contusion of the right knee, clinically resolved; sprain/strain of the right knee with tear of the medial meniscus and status postop arthroscopic surgery of the right knee with a partial medial meniscectomy and chondral shaving of acute chondral defect of the medial femoral condyle. Dr. S did not consider or rate pain disorder associated with both psychological factors and a general medical condition which have been administratively determined to be part of the compensable injury. Therefore, the certification of Dr. S could not be adopted.

After the CCH, the hearing officer ordered a re-examination of the MMI and IR issues and Dr. M was appointed. Dr. M examined the claimant on December 23, 2013, and certified that the claimant reached MMI on that date with a one percent IR. Dr. M noted that the claimant had a cortisone injection on December 13, 2013, which only relieved his pain for a couple of days, and that the claimant had full ROM in his right knee and a normal neurological examination. Dr. M noted that the claimant had undergone a chronic pain management program. Dr. M assessed zero percent impairment for the following conditions: right knee contusion, right knee sprain/strain, right acute chondral defect of the medial femoral condyle, and pain disorder associated with psychological factors and a general medical condition. Dr. M assessed one percent IR for the claimant's right knee medial meniscus tear using Table 64 on page 3/85 of the AMA Guides. The hearing officer's determination that the claimant reached MMI on December 23, 2013, with a one percent IR is supported by sufficient evidence and is affirmed.

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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge