

APPEAL NO. 140509
FILED MAY 5, 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 January 9, 2014, with the record closing on February 12, 2014, 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 right degenerative De Quervain's tenosynovitis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 6, 2013; and (3) the claimant's impairment rating (IR) is two percent.

The claimant appealed the hearing officer's determinations, contending that the evidence is sufficient to support a determination that the compensable injury of [date of injury], extends to right degenerative De Quervain's tenosynovitis and that she has not reached MMI. 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], which includes a right wrist contusion and a focal subchondral cyst; and (2) [Dr. G] was the designated doctor assigned on the issues of MMI and IR. The claimant testified that on the date of injury she was working on a shipping line, which has metal rollers that move the boxes along, and when she picked up two or three boxes at once her right wrist hit the side of the metal shipping line.

EXTENT OF INJURY

The hearing officer's determination that the claimant's compensable injury of [date of injury], does not extend to right degenerative De Quervain's tenosynovitis 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 Texas Department of Insurance, Division of Workers' Compensation (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.

Dr. G, the designated doctor, examined the claimant on May 8, 2013. In a Report of Medical Evaluation (DWC-69) dated May 17, 2013, Dr. G certified that the claimant reached clinical MMI on March 6, 2013, with a two 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). In his narrative report dated May 8, 2013, Dr. G stated that:

As per Rule 137.10 the [Medical Disability Advisor, Workplace Guidelines for Disability Duration, excluding all sections and tables relating to rehabilitation published by the Reed Group, Ltd. (MDG)] shows expected disability for contusion upper limb at medium workload to be 28 days, and ganglionectomy medium workload to also be 28 days. It is therefore my opinion that she reached MMI 28 days post operatively on March 6th, 2013.

Dr. G's certification that the claimant reached MMI on March 6, 2013, with a two percent IR cannot be adopted. The Appeals Panel has previously held that the MDG cannot be used alone, without considering the claimant's physical examination and medical records, in determining a claimant's date of MMI. See Appeals Panel Decision (APD) 130191, decided March 13, 2013, and APD 130187, decided March 18, 2013. In this case, Dr. G based his date of MMI solely on the MDG without considering the claimant's physical examination and medical records. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on March 6, 2013.

Given that the MMI determination is reversed, we must also reverse the hearing officer's IR determination because it was based on a date of MMI of March 6, 2013. The IR must be assessed as of the date of MMI. See Rule 130.1(c)(3). Because the date of MMI must be re-assessed, so must the IR. Accordingly, we reverse the hearing officer's determination that the claimant's IR is two percent.

We note that though it does not change the whole person impairment, Dr. G made an error in the upper extremity impairment he assigned for extension of the right wrist. Dr. G measured 40 degrees of extension, which using Figure 26 on page 3/36 of the AMA Guides results in a four percent upper extremity impairment, not a three percent upper extremity impairment. Using Table 3, page 3/20 of the AMA Guides, both three percent and four percent upper extremity impairments convert to a two percent whole person impairment.

There are no other certifications of MMI/IR in evidence. There is a narrative report from [Dr. C], the claimant's treating doctor, wherein Dr. C disagrees with Dr. G's certification of MMI/IR. Dr. C states that it is "impossible for the [claimant] to have reached MMI for the diagnostic of DeQuarvain's [sic] Syndrome." However, since the hearing officer's determination that the claimant's compensable injury of [date of injury], does not extend to right degenerative De Quervain's tenosynovitis has been affirmed, we cannot render that the claimant has not reached MMI based upon Dr. C's opinion.

Since there are no other certifications of MMI and IR 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 claimant's compensable injury of [date of injury], does not extend to right degenerative De Quervain's tenosynovitis.

We reverse the hearing officer's determinations that the claimant reached MMI on March 6, 2013, and that the claimant's IR is two percent and remand the issues of MMI and IR to the hearing officer to make determinations consistent with this decision.

REMAND INSTRUCTIONS

Dr. G is the designated doctor in this case. The hearing officer is to determine whether Dr. G is still qualified and available to be the designated doctor. If Dr. G is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Rule 127.5(c) to determine MMI and IR.

The hearing officer is to inform the designated doctor that the parties stipulated that the claimant's compensable injury of [date of injury], extends to a right wrist contusion and a focal subchondral cyst. The hearing officer is also to inform the designated doctor that it has been administratively determined that the claimant's

compensable injury of [date of injury], does not extend to right degenerative De Quervain's tenosynovitis. The hearing officer is to request that the designated doctor give an opinion on the claimant's MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination. The hearing officer is to advise the designated doctor to explain how he arrived at his date of MMI, and that the date of MMI cannot be based solely on the MDG.

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 to then make determinations on MMI and IR consistent with the evidence and 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 **SAFETY NATIONAL CASUALTY CORPORATION** 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 75201-4284.**

Tracey T. Guerra
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge