

APPEAL NO. 140824
FILED JUNE 9, 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 20, 2014, 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], does not extend to an umbilical hernia and paraumbilical hernia; (2) the date of the appellant's (claimant) maximum medical improvement (MMI) is January 8, 2013; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed all of the hearing officer's determinations. The claimant argues that [Dr. D], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine initially the extent of the claimant's compensable injury, and also subsequently appointed to determine MMI and IR, did not have all of the medical records necessary to make his determination regarding the extent of the compensable injury. The claimant also argues that the compensable injury does extend to the claimed conditions, and as such the hearing officer's MMI/IR determinations do not consider the entire compensable injury. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The claimant testified that she felt a gushing and tearing in her stomach when she lifted a patient weighing approximately 270 pounds from a bed to a bedside commode. It was undisputed that Dr. D was appointed by the Division initially to determine the extent of the claimant's compensable injury and that he examined the claimant for this purpose on April 3, 2013. It was also undisputed that Dr. D was subsequently appointed to determine MMI and IR and that he examined the claimant for this purpose on July 10, 2013. We note that medical records in evidence state that the claimant had previously sustained a hernia in 2011.

The hearing officer noted in the Discussion portion of the decision that the Division appointed Dr. D to determine if the claimant's compensable injury caused or aggravated the hernias. The hearing officer went on to state that:

[Dr. D] examined [the] [c]laimant and wrote on April 3, 2013, that the compensable injury did not extend to either hernia and did not aggravate the hernia,

writing that the hernias were pre-existing conditions and that testing did not show growth or changes from February 17, 2011, through January 30, 2013.

In his narrative report dated April 3, 2013, regarding the extent of the claimant's compensable injury, Dr. D noted: "[f]our well-healed microscopic [scars] are appreciated, where presumably the abdominal mesh was inserted. No [o]perative notes from [February 25, 2013], were available."

In evidence is an operative report dated February 25, 2013, for a laparoscopic ventral incisional hernia repair performed by [Dr. R]. Also in evidence are records from Dr. R dating February 22, 2013, through April 5, 2013. Dr. D did not discuss in his narrative report dated April 3, 2013, any medical record from Dr. R.

Section 408.0041(a)(3) provides that at the request of the insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the extent of the employee's compensable injury. See *also* 28 TEX. ADMIN. CODE § 127.1(a)(3) (Rule 127.1(a)(3)). Rule 127.10(a)(1) provides in part that the treating doctor and insurance carrier shall provide to the designated doctor copies of all the injured employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor. See *also* Rules 127.10(a)(3) and 127.10(b).

It is clear from Dr. D's narrative report dated April 3, 2013, that he did not have all of the claimant's medical records as required by Rule 127.10 when he determined the extent of the compensable injury. See Appeals Panel Decision (APD) 132258, decided November 20, 2013, and APD 140123, decided March 14, 2014. Accordingly, we reverse the hearing officer's determination that the claimant's compensable injury does not extend to an umbilical hernia and paraumbilical hernia, and we remand the extent-of-injury issue to the hearing officer for further consideration of all the evidence and for further proceedings consistent with this decision.

Because we have reversed the hearing officer's extent-of-injury determination and have remanded that issue to the hearing officer, we also reverse the hearing officer's determination that the claimant reached MMI on January 8, 2013, with a zero percent IR and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to an umbilical hernia and paraumbilical hernia, and we remand the issue of the extent of the claimant's compensable injury to the hearing

officer for further consideration of all the evidence and for further proceedings consistent with this decision.

We reverse the hearing officer's determinations that the claimant's date of MMI is January 8, 2013, and that the claimant's IR is zero percent, and we remand the issues of MMI and IR 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. If Dr. D is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Rule 127.5(c) to determine the extent of injury for the compensable injury of [date of injury], and if necessary, the claimant's MMI and IR.

On remand, the hearing officer shall cause to be forwarded to the designated doctor copies of all the claimant's medical records relating to the medical conditions to be evaluated that were not provided to Dr. D, including the February 25, 2013, operative report and medical records from Dr. R.

The parties are to be provided with the hearing officer's letter to the designated doctor and the designated doctor's response. The parties are to be allowed an opportunity to respond. Once the hearing officer determines whether or not the compensable injury of [date of injury], extends to an umbilical hernia and paraumbilical hernia, the hearing officer is then to determine the claimant's date of MMI and IR.

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 **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge