

**APPEAL NO. 140971  
FILED JULY 10, 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 March 11, 2014, in Houston, 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 a left hamstring strain, a left knee medial meniscus tear, a left knee ACL tear, an aggravation of patellofemoral arthritis of the left knee, and an aggravation of chondromalacia of the left knee; (2) the respondent (claimant) reached maximum medical improvement (MMI) on June 14, 2013; and (3) the claimant's impairment rating (IR) is 10%. The appellant (carrier) appealed that portion of the hearing officer's determination that the compensable injury of [date of injury], extends to an aggravation of patellofemoral arthritis of the left knee and an aggravation of chondromalacia of the left knee. The carrier also appeals the hearing officer's MMI and IR determinations, and it states that the hearing officer made a clerical error in noting that the MMI date was June 14, 2013, which is incorrect. The appeal file does not contain a response from the claimant.

That portion of the hearing officer's decision that the compensable injury of [date of injury], extends to a left hamstring strain, a left knee medial meniscus tear, a left knee ACL tear has not been appealed and has become final pursuant to Section 410.169. Furthermore, at the CCH the parties stipulated that the compensable injury of [date of injury], extends to a left hamstring strain, a left knee medial meniscus tear, and a left knee ACL tear.

**DECISION**

Affirmed in part and reversed and remanded in part.

The claimant testified that he stepped in a hole and twisted his left knee on [date of injury]. The parties stipulated that on [date of injury], the claimant sustained a compensable injury, and the compensable injury includes acute lumbar facet syndrome. Also, with regard to three of the extent-of-injury conditions in dispute, the parties stipulated that on [date of injury], the compensable injury extends to a left hamstring strain, a left knee medial meniscus tear, and a left knee ACL tear. In this case, (Dr. J) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor for MMI, IR and extent of injury.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury extends to an aggravation of patellofemoral arthritis of the left knee and an aggravation of chondromalacia 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.

Dr. J initially examined the claimant on May 21, 2012, and certified that the claimant had not yet reached MMI because he had just had knee surgery and was undergoing physical therapy for his left knee. Dr. J re-examined the claimant on April 8, 2013, and certified that the claimant had not yet reached MMI because a patellofemoral resurfacing surgery is being considered for his left knee. Dr. J later examined the claimant on July 22, 2013, and provided two alternative certifications of MMI/IR. With regard to the compensable injury to the left knee, Dr. J certified that the claimant reached statutory MMI on June 14, 2013, with a 4% IR. With regard to the compensable injury and the disputed patellofemoral condition, Dr. J certified that the claimant reached statutory MMI on June 14, 2013, with a 10% IR.

The Division sent a letter of clarification dated October 9, 2013, to Dr. J informing him that the date of statutory MMI was June 4, 2013, not June 14, 2013. In response Dr. J amended his alternative certifications of MMI/IR to reflect a statutory MMI date of June 4, 2013. Although Dr. J amended his certifications to reflect an MMI date of June 4, 2013, the hearing officer's decision, findings of fact, and conclusion of law reference an MMI date of June 14, 2013. The hearing officer erred in determining that the

claimant reached statutory MMI on June 14, 2013, with a 10% IR as certified by Dr. J, the designated doctor, as discussed below.

First with regard to the date of statutory MMI, there is conflicting evidence on what the actual date of statutory MMI is. We note that the parties did not stipulate to the date of statutory MMI. Although the Division informed Dr. J that the date of statutory MMI is June 4, 2013, based on a review of the record, there is conflicting evidence as to the actual date of statutory MMI. In evidence is a Request for Designated Doctor Examination (DWC-32) dated July 27, 2011, from the claimant's representative listing the date of statutory MMI as June 2, 2013. Also, in evidence is an email exchange between the carrier and the claimant's representative dated August 8 and 9, 2013, in which the carrier informs the claimant's representative that the date of statutory MMI is June 4, 2013. Furthermore, in evidence is a Notification of First Temporary Income Benefits [TIBs] Payment (PLN-2) dated October 6, 2011, which states that TIBs began on July 25, 2011, which was the claimant's eighth day of disability. Consequently, with an eighth day of disability beginning July 25, 2011, the date of statutory MMI would be July 22, 2013, a later date than June 4, 2013. In this case, given that the designated doctor, Dr. J, opined that the claimant reached MMI on the statutory date of MMI, and there is conflicting evidence as to the date of statutory MMI, the hearing officer's determination that the claimant reached MMI on June 14, 2013, as certified by Dr. J is against the great weight and preponderance of the evidence.

Second, with regard to the claimant's IR, the claimant's compensable injury is an acute lumbar facet syndrome, a left hamstring strain, a left knee medial meniscus tear, and a left knee ACL tear, as stipulated by the parties, and the compensable injury extends to an aggravation of patellofemoral arthritis of the left knee and an aggravation of chondromalacia of the left knee, as affirmed by the Appeals Panel in this decision. The designated doctor, Dr. J, examined the claimant on July 22, 2013, and provided alternative certifications of MMI/IR that included compensable injuries and disputed extent-of-injury conditions.

In summation, Dr. J provided six certifications of MMI/IR, one certification based on the examinations on May 21, 2012, April 8, 2013, and July 22, 2013, as follows: (1) the claimant has not reached MMI, based on the May 21, 2012, examination ; (2) the claimant has not reached MMI, based on the April 8, 2013, examination; (3) the claimant reached MMI on June 14, 2013, with a 4% IR, based on the July 22, 2013, examination; (4) the claimant reached MMI on June 14, 2013, with a 10% IR, based on the July 22, 2013, examination; (5) the claimant reached MMI on June 4, 2013, with a 4% IR, based on the July 22, 2013, examination; and (6) the claimant reached MMI on June 4, 2013, with a 10% IR, based on the July 22, 2013, examination. None of these

certifications can be adopted, because Dr. J did not rate the entire compensable injury. Dr. J did not rate the lumbar spine and chondromalacia conditions of the left knee in any of the certifications based on the examinations on May 21, 2012, April 8, 2013, and July 22, 2013. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on June 14, 2013, with a 10% IR.

The post-designated doctor required medical examination doctor, Dr. D, examined the claimant on October 30, 2013, and provided two alternative certifications of MMI/IR. Dr. D certified that the claimant reached MMI on April 25, 2011, with a 0% IR for the left hamstring strain injury. Also, Dr. D certified that the claimant reached MMI on August 23, 2012, with a 4% IR for the disputed extent-of-injury conditions of an ACL tear, lumbar facet syndrome, and degenerative arthritic condition of the left knee. Dr. D's certifications of MMI and IR cannot be adopted because neither certification rates the entire compensable injury, which includes the chondromalacia.

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 the compensable injury of [date of injury], extends to an aggravation of patellofemoral arthritis of the left knee and an aggravation of chondromalacia of the left knee.

We reverse the hearing officer's determinations that the claimant reached MMI on June 14, 2013, 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. J is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. J is still qualified and available to be the designated doctor. If Dr. J 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 ask the parties to stipulate to the date of statutory MMI or to make a finding regarding the date of statutory MMI. The hearing officer is to notify the designated doctor of the date of statutory MMI. The hearing officer is to notify the designated doctor that the compensable injury of [date of injury], extends to acute lumbar facet syndrome, a left hamstring strain, a left knee medial meniscus tear, a left

knee ACL tear, an aggravation of patellofemoral arthritis of the left knee, and an aggravation of chondromalacia of the left knee.

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 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 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **XL SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**KIRK HOOD  
1021 MAIN STREET, SUITE 1150  
HOUSTON, TEXAS 77002.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam

Appeals Judge

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Margaret L. Turner  
Appeals Judge