APPEAL NO. 141083
FILED JULY 21, 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 April 23, 2014, in San Antonio, 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 injury to the respondent's (claimant) lumbar and thoracic spine; (2) the claimant reached maximum medical improvement (MMI) on February 6, 2014; (3) the claimant's impairment rating (IR) is 15%; and (4) the claimant is not yet eligible for the first quarter of supplemental income benefits (SIBs).

The appellant (carrier) appealed all of the hearing officer's determinations. The carrier contends that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed as reformed in part and reversed and remanded in part.

The claimant testified he was injured when a 700-pound rack fell on top of him while he was installing electrical conduit.

CLERICAL ERRORS

We note that the hearing officer's decision contains clerical errors. First, the decision states that the claimant offered Exhibit Nos. 1 through 15 at the CCH. However, a review of the record reveals that the claimant withdrew Exhibit 14. Accordingly, we reform the hearing officer's decision to state that Claimant's Exhibit Nos. 1 through 13 and 15 were admitted to reflect the exhibits actually admitted into the record during the CCH.

Next, Finding of Fact No. 1.B. states that:

> On [date of injury] [the] [c]laimant was the employee of [Employer], and sustained a compensable injury to thoracic T-10 and T-11 rib fractures, when a 700-lb rack fell on top of him while installing electrical conduit.

However, the parties actually stipulated that the claimant sustained a compensable injury not only to thoracic T-10 and T-11 rib fractures, but also to a sternal body buckle fracture. Accordingly, we reform Finding of Fact No. 1.B. to include a sternal body buckle fracture.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury] extends to injury to the claimant's lumbar and thoracic spine 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.

The hearing officer determined that the claimant reached MMI on February 6, 2014, with a 15% IR as certified by (Dr. P), the treating doctor.

Dr. P examined the claimant on March 6, 2014. In his narrative report, Dr. P noted the following impressions: multiple rib fractures; sternal fracture; history of collapsed lung with reconstruction; thoracic compression fracture; and thoracic radiculitis. Dr. P did not mention the claimant's lumbar spine. As previously discussed, the hearing officer's determination that the compensable injury extends to injury to the claimant's lumbar and thoracic spine has been affirmed. Dr. P failed to rate the entire compensable injury.

Further, Dr. P noted that "[Dr. D][1] is also of the opinion that [the claimant] is entitled for a 15% [IR] for the thoracic compression fracture, I agree with it." Dr. P did not explain how he assessed the claimant's 15% IR.

Rule 130.1(c)(3) provides in pertinent part that the assignment of an IR shall be based on the injured worker's condition as of the MMI date considering the medical record and the certifying examination and the doctor assigning the IR shall:

> (A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;
> (B) document specific laboratory or clinical findings of an impairment;
> (C) analyze specific clinical and laboratory findings of an impairment;
> (D) compare the results of the analysis with the impairment criteria and provide the following:
>
> (i) [a] description and explanation of specific clinical findings related to each impairment, including [0%] [IRs]; and
> (ii) [a] description of how the findings relate to and compare with the criteria described in the applicable chapter of 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 doctor's inability to obtain required measurements must be explained.

Dr. P's MMI/IR certification does not conform with Rule 130.1(c) because Dr. P does not document, analyze, or explain how he derived the 15% IR; Dr. P only mentions that he agreed with Dr. D's 15% IR assessment. For these reasons, we reverse the hearing officer's determination that the claimant reached MMI on February 6, 2014, with a 15% IR.

There are two other MMI/IR certifications in evidence. The first is from (Dr. M), the designated doctor appointed by the Division to determine MMI, IR, and extent of injury. Dr. M examined the claimant on October 24, 2013, and certified that the claimant reached MMI on December 19, 2012, with a 15% IR. Dr. M noted in his narrative report that the compensable injury as stated on the Request for Designated Doctor Examination (DWC-32) are T-10 and T-11 rib fractures and a sternal body buckle fracture. Although Dr. M noted that the claimant claimed injuries to the lumbar spine

[1] We note that Dr. P incorrectly identifies the post-designated doctor required medical examination (RME) doctor (Dr. D), as Dr. D.

and left shoulder, Dr. M did not otherwise discuss the claimant's lumbar spine. Dr. M placed the claimant in Diagnosis-Related Estimate (DRE) Thoracolumbar Category III: Radiculopathy based on structural inclusions of 25-50% compression fracture of the vertebral body in the thoracic spine. Dr. M failed to consider an injury to the claimant's lumbar spine, which, as stated above has been determined to be part of the compensable injury. Dr. M failed to consider the entire compensable injury, and as such his MMI/IR certification cannot be adopted.

The final MMI/IR certification in evidence is from Dr. D, the post-designated doctor RME doctor. Dr. D examined the claimant on February 13, 2014, and certified that the claimant reached MMI on August 29, 2012, with a 15% IR. In his narrative report Dr. D noted the following diagnoses: closed fracture dorsal vertebrae without cord injury; pain thoracic spine; closed fracture of multiple ribs, unspecified; and closed fracture sternum. Dr. D placed the claimant in DRE Thoracolumbar Category III: Radiculopathy for 15% impairment based on structural inclusions of 25-50% loss of vertebral height of the thoracic spine. Dr. D also assessed 0% impairment for the claimant's rib fractures. However, Dr. D failed to consider an injury to the claimant's lumbar spine, which, as stated above has been determined to be part of the compensable injury. Dr. D failed to consider the entire compensable injury, and as such his 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.

ENTITLEMENT TO FIRST QUARTER SIBs

The hearing officer determined that the claimant is not yet eligible for SIBs based on his determination that the claimant reached MMI on February 6, 2014. A claimant is not eligible for SIBs until the expiration of impairment income benefits (IIBs), among other things. Section 408.142. A claimant's entitlement to IIBs begins on the day after the date the claimant reaches MMI. Section 408.121. Because we have reversed the hearing officer's determinations that the claimant reached MMI on February 6, 2014, with a 15% IR and have remanded the issues of MMI and IR to the hearing officer, we also reverse the hearing officer's determination that the claimant is not yet eligible for SIBs and we remand the issue of entitlement to first quarter SIBs 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 injury to the claimant's lumbar and thoracic spine.

We reform the hearing officer's decision to state that Claimant's Exhibit Nos. 1 through 13 and 15 were admitted, to reflect the exhibits actually admitted into the record during the CCH.

We reform Finding of Fact No. 1.B. to add a sternal body buckle fracture as part of the compensable injury to reflect the correct stipulation made by the parties during the CCH.

We reverse the hearing officer's determinations that the claimant reached MMI on February 6, 2014, with a 15% IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant is not yet eligible for the first quarter of SIBs, and we remand the issue of whether the claimant is entitled to first quarter SIBs to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. M is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. M is still qualified and available to be the designated doctor. If Dr. M is no longer qualified or available to serve as the designated doctor, 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 advise the designated doctor that the compensable injury of [date of injury] extends to thoracic T-10 and T-11 rib fractures, a sternal body buckle fracture, and injury to the claimant's lumbar and thoracic spine. The hearing officer is to request the designated doctor to 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 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. Once the hearing officer determines the claimant's MMI and IR, the hearing officer is then to determine whether the claimant is entitled to first quarter SIBs 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 **SENTRY INSURANCE A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge