

APPEAL NO. 141173
FILED JULY 24, 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 April 23, 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], does not extend to a C5-6 disc protrusion or a right shoulder tendon tear; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 12, 2013; and (3) the claimant's impairment rating (IR) is four percent.

The claimant appealed all of the hearing officer's determinations, contending that the evidence does not support those determinations. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], that included a cervical sprain/strain, a right shoulder sprain/strain, and a right shoulder rotator cuff tear. The claimant testified he was injured while manufacturing parts that involved repetitive motions.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to a C5-6 disc protrusion or a right shoulder tendon tear 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 January 12, 2013, with a four percent IR as certified by (Dr. A), the designated doctor appointed by the Division to determine MMI and IR. Dr. A examined the claimant on August 26, 2013. Dr. A noted the following diagnoses in his certification: cervical sprain/strain and right shoulder sprain/strain. Dr. A noted in his narrative report that the claimant underwent an arthroscopic rotator cuff repair on December 6, 2012. However, Dr. A did not further address a right shoulder rotator cuff tear. 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), Dr. A placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints or Symptoms for zero percent impairment.¹ Dr. A also assigned four percent whole person impairment for the claimant's right shoulder based on range of motion (ROM) measurements taken of the claimant's right shoulder.

The claimant points out in his appeal that the Request for Designated Doctor Examination (DWC-32) submitted by the carrier failed to list the entire compensable injury as accepted by the carrier. Specifically, the claimant pointed out that the DWC-32 listed only a bilateral neck sprain and a right shoulder sprain/strain as accepted by the carrier and failed to include the right shoulder rotator cuff tear. The claimant is correct; the DWC-32 submitted by the carrier does omit any reference to a right shoulder rotator cuff tear.

As discussed above, the parties stipulated that the compensable injury includes a cervical sprain/strain, a right shoulder sprain/strain, and a right shoulder rotator cuff tear. Although Dr. A noted in his narrative report that the claimant underwent an

¹ We note that Dr. A also stated in his narrative report that the claimant had complaints or symptoms in the lumbosacral spine, and placed the claimant in "DRE Category I, page 110" for zero percent impairment for this condition. However, because Dr. A's narrative discusses and rates the claimant's cervical spine, and because Dr. A noted a diagnosis of a cervical sprain/strain and did not note any diagnosis related to the claimant's lumbar spine, we consider his reference to the claimant's lumbosacral spine a typographical error.

arthroscopic rotator cuff repair on December 6, 2012, Dr. A did not specifically consider or rate a right shoulder rotator cuff tear. (Dr. K-M), a referral doctor, noted in a narrative report dated August 15, 2013, that the claimant was placed in a shoulder immobilizer after the right shoulder rotator cuff repair, which was discontinued on January 10, 2013, and that beginning February 6, 2013, the claimant initiated “extensive, formal physical therapy.” As Dr. A failed to consider the right shoulder rotator cuff tear, which the parties stipulated was a part of the compensable injury, we reverse the hearing officer’s determination that the claimant reached MMI on January 12, 2013, with a four percent IR.

There is one other MMI/IR certification in evidence, which is from Dr. K-M, a referral doctor. Dr. K-M examined the claimant on August 15, 2013, and certified that the claimant reached MMI on August 2, 2013, with a two percent IR. Dr. K-M listed the following diagnoses in his certification: cervical sprain/strain; right shoulder sprain/strain; and right shoulder rotator cuff tear. Dr. K-M noted on August 2, 2013, that the claimant’s treating doctor had stated the claimant’s condition had plateaued. Using the AMA Guides, Dr. K-M placed the claimant in DRE Cervicothoracic Category I: Symptoms and Complaints for zero percent impairment. Dr. K-M also assessed two percent impairment based on ROM measurements taken of the claimant’s right shoulder. Dr. K-M considered and rated the entire compensable injury. Accordingly, we render a new decision that the claimant reached MMI on August 2, 2013, with a two percent IR.

SUMMARY

We affirm the hearing officer’s determination that the [date of injury], compensable injury does not extend to a C5-6 disc protrusion or a right shoulder tendon tear.

We reverse the hearing officer’s determinations that the claimant reached MMI on January 12, 2013, with a four percent IR.

We render a new decision that the claimant reached MMI on August 2, 2013, with a two percent IR.

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

**CORPORATION SERVICE COMPANY
D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge