

APPEAL NO. 141281
FILED AUGUST 7, 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 May 15, 2014, in Austin, 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 subtle inner free edge horizontal tear at the posterior horn mid body junction of the lateral meniscus and deep vein thrombosis of the right knee; (2) the date of maximum medical improvement (MMI) is May 15, 2012; and (3) the impairment rating (IR) is zero percent.

The appellant (claimant) appealed all of the hearing officer's determinations, contending that the hearing officer's determinations are against the great weight and preponderance of the evidence. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the carrier has accepted as compensable a right knee contusion and a right knee sprain. The claimant testified that she was injured when a suitcase weighing approximately 100 pounds fell off of a luggage carousel and struck her right knee.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to a subtle inner free edge horizontal tear at the posterior horn mid body junction of the lateral meniscus and deep vein thrombosis of the right 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 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 May 15, 2012, with a zero percent IR as certified by (Dr. C), the designated doctor appointed by the Division to determine MMI and IR.

Dr. C examined the claimant on November 5, 2012. Dr. C states in his narrative report that the claimant reached MMI “[c]linically on [May 15, 2012].” However, Dr. C’s Report of Medical Evaluation (DWC-69) states that he certified the claimant reached clinical MMI on “[May 5, 2012].” There is no DWC-69 in evidence from Dr. C with a May 15, 2012, date of MMI.

There is an internal inconsistency between the MMI date Dr. C certified in his narrative report and the MMI date Dr. C certified on the DWC-69. Because the narrative report and DWC-69 list completely different dates regarding when the claimant reached MMI, we do not consider that internal inconsistency to be a clerical error that can be corrected. See Appeals Panel Decision 130739, decided May 7, 2013. Accordingly, we reverse the hearing officer’s determination that the claimant reached MMI on May 15, 2012.

With regard to the IR, Rule 130.1(c)(3) provides that an assignment of IR shall be based on the claimant’s condition as of the MMI date. Given that we have reversed the hearing officer’s MMI determination, we also reverse the hearing officer’s determination that the claimant’s IR is zero percent.

There are two other MMI/IR certifications in evidence. The first is (Dr. M), the claimant’s treating doctor. Dr. M examined the claimant on November 27, 2012, and certified that the claimant reached MMI on November 27, 2012, with an eight percent IR. Dr. M assessed the following conditions in her narrative report: right knee contusion, right knee sprain and contusion, resolved deep vein thrombosis, and resolved pulmonary embolus. As discussed above, the hearing officer’s determination that the compensable injury does not extend to deep vein thrombosis of the right knee has been affirmed. Dr. M considered a condition that has been determined to be not

part of the compensable injury. Accordingly, her MMI/IR certification cannot be adopted.

The other MMI/IR certification is from (Dr. F). Dr. F examined the claimant on February 20, 2014, and certified that the claimant reached MMI on November 27, 2012, with an eight percent IR. Dr. F noted diagnoses of right knee contusion and right knee sprain in his narrative report. Dr. F explained that the claimant should be placed at MMI on November 27, 2012, because that was when the claimant had completed all conservative care and was returned to work without restrictions. 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), Dr. F assigned eight percent impairment based on range of motion measurements taken of the claimant's right knee. We note that although Dr. F stated in his narrative report that he was of the opinion the claimant's diagnoses of deep vein thrombosis and pulmonary embolism should be considered part of the compensable injury, Dr. F did not specifically consider or rate those conditions.

As discussed above, the parties stipulated that the carrier has accepted as compensable a right knee contusion and a right knee sprain, and that the hearing officer's determination that the compensable injury does not extend to a subtle inner free edge horizontal tear at the posterior horn mid body junction of the lateral meniscus and deep vein thrombosis of the right knee has been affirmed. Dr. F's MMI/IR certification is based on the claimant's compensable injury. Accordingly, we render a new decision that the claimant reached MMI on November 27, 2012, with an eight percent IR.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to a subtle inner free edge horizontal tear at the posterior horn mid body junction of the lateral meniscus and deep vein thrombosis of the right knee.

We reverse the hearing officer's determinations that the date of MMI is May 15, 2012, and that the IR is zero percent.

We render a new decision that the date of MMI is November 27, 2012, and that the IR is eight percent.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE 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 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge