

APPEAL NO. 141299
FILED AUGUST 11, 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 2, 2014, in Fort Worth, 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 pain disorder with psychological factors and a general medical condition and depression; and (2) the respondent's (claimant) impairment rating (IR) is 11%. The appellant (carrier) appealed the hearing officer's extent of injury and IR determinations, contending that the claimant did not meet his burden of proof on the extent-of-injury issue and that the designated doctor has presumptive weight on the issue of IR. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that on [date of injury], he was driving a truck when a gust of wind knocked his trailer on its side and he sustained injuries to his body. The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury; (2) the accepted compensable injury is a left leg contusion, facial contusion, cervical strain, lumbar strain, left tooth injury, and a left shoulder strain, and that by decision and order,¹ the compensable injury extends to disc protrusions at C4-5, C5-6, C6-7, and C7-T1; (3) (Dr. T) is the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor to address maximum medical improvement (MMI) and IR; and (4) the claimant reached MMI on April 11, 2013, the statutory MMI date, as certified by both Dr. T, the Division-appointed designated doctor, on June 4, 2013, and (Dr. F), the referral doctor, on January 20, 2014.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], extends to pain disorder with psychological factors and a general medical condition and depression is supported by sufficient evidence and is affirmed.

IR

¹ In a Decision and Order issued on October 2, 2012, the hearing officer determined that the claimant's compensable injury of [date of injury], extends to cervical spine disc bulges at C4-5, C5-6, C6-7 and C7-T1.

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. As previously noted, the parties stipulated that the claimant reached MMI on April 11, 2013, the statutory MMI date.

In evidence there are two certifications of MMI/IR with the stipulated date of MMI of April 11, 2013, from Dr. T, the designated doctor, and Dr. F, the referral doctor. Both Dr. T and Dr. F assessed an impairment 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).

The hearing officer found that Dr. T's certification that the claimant reached MMI on April 11, 2013, with a 5% IR is contrary to the preponderance of the evidence. That finding is supported by sufficient evidence. Although not discussed by the hearing officer in the decision, Dr. T's certification of MMI/IR does not consider and rate the psychological conditions, specifically pain disorder with psychological factors and a general medical condition and depression. Since Dr. T's certification of MMI/IR does not rate the entire compensable injury, it cannot be adopted.

The hearing officer found Dr. F's certification that the claimant reached MMI on April 11, 2013, with an 11% IR is supported by a preponderance of the evidence. As previously stated above, the parties stipulated that the claimant's compensable injury of [date of injury], extends to a left leg contusion, facial contusion, cervical strain, lumbar strain, left tooth injury, a left shoulder strain, and disc protrusions at C4-5, C5-6, C6-7, and C7-T1, and we have affirmed the hearing officer's determination that the compensable injury of [date of injury], extends to pain disorder with psychological factors and a general medical condition and depression. Dr. F's narrative report dated January 20, 2014, states that he assessed 5% impairment for the cervical spine, 0% impairment for the lumbar spine, 2% impairment for the left shoulder, and 4% impairment for the psychological conditions. However, Dr. F did not consider or rate a left leg contusion, facial contusion, and left tooth injury. Since Dr. F's certification of MMI/IR does not rate the entire compensable injury, it cannot be adopted. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 11%.

There is no other certification of MMI/IR with an MMI date of April 11, 2013, in evidence that can be adopted. Since no certification of MMI/IR can be adopted, we remand the IR issue 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 pain disorder with psychological factors and a general medical condition and depression.

We reverse the hearing officer's determination that the claimant's IR is 11% and remand the IR issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. T is the designated doctor. On remand, the hearing officer is to determine whether Dr. T is still qualified and available to be the designated doctor. If Dr. T 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 IR for the compensable injury of [date of injury].

The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], extends to: (1) left leg contusion; (2) facial contusion; (3) cervical strain; (4) lumbar strain; (5) left tooth injury; (6) a left shoulder strain; (7) disc protrusions at C4-5, C5-6, C6-7, and C7-T1; (8) pain disorder with psychological factors and a general medical condition; and, (9) depression.

The hearing officer is then to request that the designated doctor assign an IR for the claimant's compensable injury of [date of injury], based on the claimant's condition as of the stipulated MMI date of April 11, 2013, considering the claimant's medical record and the certifying examination and in accordance with Rule 130.1(c)(3).

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. The hearing officer is then to make a determination on IR supported by the evidence and 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 **ACCIDENT FUND NATIONAL INSURANCE 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 75201-3136**

Veronica Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge