APPEAL NO. 141332
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 14, 2014, in Dallas, 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 left knee medial meniscus tear; (2) the appellant's (claimant) maximum medical improvement (MMI) date is June 20, 2013; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant had disability during the period at issue only beginning on June 21, 2013, and continuing through September 18, 2013.

The claimant appealed the hearing officer's extent of injury, MMI, and IR determinations on a sufficiency of the evidence point of error. The respondent (carrier) responded, urging affirmance of those determinations. The hearing officer's determination that the claimant had disability during the period at issue only beginning on June 21, 2013, and continuing through September 18, 2013, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the carrier has accepted a left knee sprain/strain. The claimant testified that he felt a pop in his left knee when he turned to his left to retrieve his work gloves.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to a left knee medial meniscus 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. Rule 130.1(d)(1) states that a certification of MMI and assignment of an IR requires completion, signing, and submission of the Report of Medical Evaluation (DWC-69) and a narrative report.

The hearing officer determined that the claimant reached MMI on June 20, 2013, with a zero percent IR as certified by (Dr. M), the designated doctor appointed by the Division. However, Dr. M did not sign the DWC-69. Rule 130.1(d)(1) provides that a certification of MMI and assignment of an IR for the compensable injury requires the "completion, signing, and submission of the [DWC-69] and a narrative report." *See* Appeals Panel Decision (APD) 100510, decided June 24, 2010, and APD 101734, decided January 27, 2011. Because the DWC-69 was not signed by Dr. M, it was error for the hearing officer to adopt his certification. Consequently, we reverse the hearing officer's determinations that the claimant's MMI date is June 20, 2013, and that the claimant's IR is zero percent.

There are two other MMI/IR certifications in evidence. The first is an alternate certification from Dr. M. Dr. M alternatively certified that the claimant had not reached MMI if the claimant has a meniscus tear repair surgery. However, as discussed above the hearing officer's determination that the compensable injury does not extend to a left knee medial meniscus tear has been affirmed. Dr. M's certification that the claimant has not reached MMI cannot be adopted because he considered a condition determined not to be part of the compensable injury. *See* APD 140505, decided May 19, 2014.

The second certification is from (Dr. W), the treating doctor referral. Dr. W examined the claimant on November 14, 2013, and certified that the claimant had not reached MMI. Dr. W explained in his narrative report that the claimant had not reached MMI because he "has been identified as a surgical candidate for left knee arthroscopic surgery secondary to a medial meniscal tear as a result of the work-related injury." However, given that the compensable injury does not extend to a left knee medial

meniscus tear, Dr. W's certification that the claimant has not reached MMI 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.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to a left knee medial meniscus tear.

We reverse the hearing officer's determinations that the claimant's MMI date is June 20, 2013, and that the claimant's IR is zero percent, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. M is the designated doctor in this case. 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.

The hearing officer is to inform the designated doctor that the compensable injury of [date of injury], extends to a left knee sprain/strain, but does not extend to a left knee medial meniscus tear. 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 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* APD 060721, decided June 12, 2006.

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

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 9001
DALLAS, TEXAS 75201-3136.

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge

[1] We note that the Decision and Order mistakenly identifies the carrier's registered agent for service of process as Suite 600 rather than Suite 900.