APPEAL NO. 141597
FILED SEPTEMBER 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 (CCH) was held on March 27, 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], does not extend to displacement of cervical intervertebral disc without myelopathy, brachial neuritis/radiculitis, lumbar intervertebral disc without myelopathy, lumbosacral neuritis/radiculitis, left elbow contusion, and fracture of the left scapula; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 31, 2011; and (3) the claimant's impairment rating (IR) is five percent.[1]

The claimant appealed all of the hearing officer's determinations, contending that the hearing officer erred as a matter of law. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The claimant testified she was injured when she slipped on ice and fell, landing completely on her back.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to displacement of cervical intervertebral disc without myelopathy, brachial neuritis/radiculitis, lumbar intervertebral disc without myelopathy, lumbosacral

[1] We note that the hearing officer in the decision and order misidentified the zip code of the carrier's registered agent for service process.

neuritis/radiculitis, left elbow contusion, and fracture of the left scapula is supported by sufficient evidence and is affirmed.

FINDINGS OF FACT NO. 1.E. AND 1.F.

The parties stipulated on the record that the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. T) as its designated doctor with regard to MMI and IR. The parties also stipulated on the record that on February 28, 2012, Dr. T certified that the claimant reached MMI on March 31, 2011, with a five percent IR. However, Finding of Fact No. 1.E. incorrectly states the parties stipulated that on August 28, 2012, Dr. T certified that the claimant reached MMI on March 31, 2011, with a five percent IR. The only Report of Medical Evaluation (DWC-69) in evidence from Dr. T certifying that the claimant reached MMI on March 31, 2011, with a five percent IR is a certification dated February 28, 2012. We reform Finding of Fact No. 1.E. to state the parties stipulated that on February 28, 2012, Dr. T certified that the claimant reached MMI on March 31, 2011, with a five percent IR, to correspond to the stipulation actually made by the parties at the CCH and Dr. T's DWC-69 in evidence.

The parties also stipulated on the record that the compensable injury includes at least a cervical sprain/strain, a left shoulder sprain/strain, and a lumbar sprain/strain. However, Finding of Fact No. 1.F. incorrectly states that the parties stipulated that the compensable injury "includes at least a cervical sprain/strain, thoracic sprain/strain, and lumbar sprain/strain." We reform Finding of Fact No. 1.F. to state the parties stipulated that the compensable injury includes at least a cervical sprain/strain, a left shoulder sprain/strain, and a lumbar sprain/strain to correspond to the stipulation actually made by the parties at the CCH.

MMI/IR

The hearing officer determined that the claimant reached MMI on March 31, 2011, and that the claimant's IR is five percent as certified by Dr. T, the designated doctor appointed by the Division. However, in Finding of Fact No. 4 the hearing officer found that Dr. T's August 28, 2012, certification of an MMI date of March 31, 2011, with a five percent IR is not contrary to the preponderance of the evidence. As mentioned above, the parties stipulated on the record that on February 28, 2012, Dr. T certified that the claimant reached MMI on March 31, 2011, with a five percent IR, and the only DWC-69 in evidence from Dr. T certifying an MMI date of March 31, 2011, with a five percent IR is dated February 28, 2012. We reform Finding of Fact No. 4 to state that Dr. T's February 28, 2012, certification of an MMI date of March 31, 2011, with a five percent IR is not contrary to the preponderance of the evidence to reflect the correct date of Dr. T's certification.

The hearing officer's determination that the claimant reached MMI on March 31, 2011, with a five percent IR is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to displacement of cervical intervertebral disc without myelopathy, brachial neuritis/radiculitis, lumbar intervertebral disc without myelopathy, lumbosacral neuritis/radiculitis, left elbow contusion, and fracture of the left scapula.

We reform Finding of Fact No. 1.E. to state the parties stipulated that on February 28, 2012, Dr. T certified that the claimant reached MMI on March 31, 2011, with a five percent IR, to correspond to the stipulation actually made by the parties at the CCH and Dr. T's DWC-69 in evidence.

We reform Finding of Fact No. 1.F. to state the parties stipulated that the compensable injury includes at least a cervical sprain/strain, a left shoulder sprain/strain, and a lumbar sprain/strain to correspond to the stipulation actually made by the parties at the CCH.

We reform Finding of Fact No. 4 to state that Dr. T's February 28, 2012, certification of an MMI date of March 31, 2011, with a five percent IR is not contrary to the preponderance of the evidence to reflect the correct date of Dr. T's certification.

We affirm the hearing officer's determination that the claimant reached MMI on March 31, 2011, and that the claimant's IR is five percent.

The true corporate name of the insurance carrier is **AMERICAN ZURICH 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.

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Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge