

APPEAL NO. 141598  
FILED SEPTEMBER 12, 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 June 9, 2014, in El Paso, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury sustained on [date of injury], does not extend to a right lateral disc osteophyte complex at C5-6 with impingement on the cervical cord and radiculopathy; and (2) the appellant's (claimant) impairment rating (IR) is 12%.

The claimant appealed the hearing officer's extent of injury and IR determinations based on sufficiency of the evidence. The respondent (carrier) responded, urging affirmance of the disputed determinations.

**DECISION**

Affirmed in part and reversed and remanded in part.

The parties stipulated that: on [date of injury], the claimant sustained a compensable injury; the Texas Department of Insurance, Division of Workers' Compensation (Division)-selected designated doctor, (Dr. W), certified that the claimant reached maximum medical improvement (MMI) on June 3, 2013, with a 21% IR; the post-designated doctor required medical examination (RME) doctor, (Dr. V), certified that the claimant reached MMI on June 3, 2013, with a 12% IR; and the claimant reached MMI on June 3, 2013, as certified by either the designated doctor or the RME doctor. It is undisputed that the claimant sustained a compensable injury to his neck, back, and right shoulder while carrying a five-gallon bucket of paint at work on [date of injury].

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury sustained on [date of injury], does not extend to a right lateral disc osteophyte complex at C5-6 with impingement on the cervical cord and radiculopathy is supported by sufficient evidence and is affirmed.

**IR**

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. See 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)).

As previously mentioned above, the claimant sustained a compensable injury on [date of injury]. At the CCH held on June 9, 2014, the carrier stated on the record that it has accepted a cervical sprain/strain, thoracic sprain/strain, lumbar sprain/strain, herniated discs at L1-2 and L5-S1, and a right shoulder sprain/strain with a tear of the supraspinatus tendon. The hearing officer's Discussion states that "[a]s a result of the compensable injury, the [c]arrier has accepted a cervical sprain, thoracic sprain, lumbar disc herniations at L2 and L5-S1 with a sprain/strain, and a right shoulder sprain with a tear of the supraspinatus tendon." In evidence is the carrier's Request for Designated Doctor Examination (DWC-32) dated April 17, 2013, which lists in Box 37 the compensable injury as "[s]oft tissue strain of the neck, thoracic strain, lumbar sprain with disc bulging at L2 and L5-S1, and right shoulder sprain with tear of the supraspinatus tendon."

In this case, there are two certifications of MMI/IR in evidence, one from Dr. W, the designated doctor, and one from Dr. V, the RME doctor. As previously mentioned, the parties stipulated that the claimant reached MMI on June 3, 2013, as certified by both Dr. W and Dr. V.

Dr. W examined the claimant on June 3, 2013, to determine MMI and IR. Dr. W certified on June 6, 2013, that the claimant reached MMI on June 3, 2013, with a 21% IR 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. W assessed a 2% impairment for loss of range of motion of the right shoulder, 5% for Lumbosacral Diagnosis-Related Estimate (DRE) Category II: Minor Impairment for the lumbar spine, and 5% Cervicothoracic DRE II: Minor Impairment for the cervical spine. Dr. W did not rate the thoracic spine. The hearing officer found that 21% IR assigned by Dr. W is contrary to the preponderance of the evidence. The hearing officer's finding is supported by sufficient evidence.

Dr. V examined the claimant on August 7, 2013, to determine MMI and IR. Dr. V certified on August 13, 2013, that the claimant reached MMI on June 3, 2013, with a 12% IR using the AMA Guides. Dr. V states in his narrative report that he assigned an impairment for the cervical spine, lumbar spine, and right shoulder; however, Dr. V did

not consider or rate the thoracic spine. As previously mentioned, at the CCH held on June 9, 2014, the carrier on the record accepted a thoracic sprain/strain. Dr. V did not consider the thoracic spine when he assessed an impairment for the compensable injury. Dr. V's certification of MMI/IR cannot be adopted. See Appeals Panel Decision (APD) 130943, decided June 13, 2013; APD 110267, decided April 19, 2011.

As there are no certifications of MMI and IR, with a date of MMI of June 3, 2013, in evidence that can be adopted, we remand the IR issue back to the hearing officer for further action consistent with this decision.

### **SUMMARY**

We affirm the hearing officer's determination the compensable injury sustained on [date of injury], does not extend to a right lateral disc osteophyte complex at C5-6 with impingement on the cervical cord and radiculopathy.

We reverse the hearing officer's determination that the claimant's IR is 12% and we remand the IR issue to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. W is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. W is still qualified and available to be the designated doctor. If Dr. W 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 [date of injury], compensable injury.

The hearing officer is to advise the designated doctor that the claimant reached MMI on June 3, 2013, as stipulated by the parties. The hearing officer is to request that the designated doctor rate the entire compensable injury of [date of injury], in accordance with the AMA Guides based on the claimant's condition as of the stipulated MMI date, June 3, 2013, considering the claimant's medical record and the certifying examination.

The hearing officer is to advise the designated doctor what the compensable injury of [date of injury], extends to a cervical sprain/strain, thoracic sprain/strain, lumbar sprain/strain, herniated discs at L1-2 and L5-S1, and a right shoulder sprain/strain with

a tear of the supraspinatus tendon. The hearing officer is also to advise the designated doctor that the compensable injury of [date of injury], does not extend to a right lateral disc osteophyte complex at C5-6 with impingement on the cervical cord and radiculopathy.

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 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RICHARD J. GERGASKO, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge