APPEAL NO. 141627
FILED SEPTEMBER 24, 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 June 23, 2014, in San Antonio, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury does not extend to a left knee sprain/strain, a left knee medial meniscus tear, and left knee chondromalacia; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 19, 2013; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed all of the hearing officer's determinations on a sufficiency of the evidence point of error. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated in part that the claimant sustained a compensable injury in the form of a left knee contusion, lumbar sprain/strain, cervical sprain/strain, jaw contusion, lip laceration, and a soft tissue injury on [Date of Injury]. We note that neither party explained to what body part the soft tissue injury occurred. The claimant testified he was injured in a motor vehicle accident on [Date of Injury].

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to a left knee sprain/strain, a left knee medial meniscus tear, and left knee chondromalacia 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 September 19, 2013, with a zero percent IR as certified by (Dr. F), the designated doctor appointed by the Division to determine MMI and IR.

Dr. F examined the claimant on September 19, 2013, and noted diagnoses of a left knee contusion, a cervical sprain/strain, and a lumbar sprain/strain. 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. F assessed zero percent impairment based on range of motion measurements taken of the claimant's left knee. Dr. F also placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints or Symptoms for zero percent impairment of the claimant's cervical spine, and DRE Lumbosacral Category I: Complaints or Symptoms for zero percent impairment of the claimant's lumbar spine. As noted above, the parties stipulated in part that the claimant sustained a compensable injury in the form of a soft tissue injury, jaw contusion, and lip laceration on [Date of Injury]. Dr. F does not mention these conditions in his narrative report. Dr. F failed to consider and rate the entire compensable injury. Accordingly, we reverse the hearing officer's determinations that the claimant reached MMI on September 19, 2013, with a zero percent IR.

There are two other MMI/IR certifications in evidence, both from (Dr. G), a referral doctor. Dr. G examined the claimant on April 9, 2014, and certified that the claimant had not reached MMI based on diagnoses of a left knee contusion, a cervical sprain/strain, and a lumbar sprain/strain. Dr. G did not mention a soft tissue injury, a jaw contusion, or a lip laceration in his narrative report, all of which are conditions stipulated by the parties as being part of the compensable injury. Dr. G's certification cannot be adopted.

Dr. G also submitted an alternate certification that the claimant has not reached MMI based on diagnoses of a cervical sprain/strain, a lumbar sprain/strain, a contusion of the left knee, and a tear of the medial cartilage or meniscus of the left knee. 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. G's alternate certification considers and rates conditions that have been determined to not be part of the compensable injury, and as such it 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 does not extend to a left knee sprain/strain, a left knee medial meniscus tear, and left knee chondromalacia.

We reverse the hearing officer's determinations that the claimant reached MMI on September 19, 2013, with a zero percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. F is the designated doctor. The hearing officer is to determine whether Dr. F is still qualified and available to be the designated doctor. If Dr. F is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Rule 127.5(c) to determine the claimant's MMI and the IR.

As discussed above, although the parties stipulated that the claimant sustained a compensable injury in the form of a soft tissue injury, among other things, the parties did not explain what body part sustained the soft tissue injury. On remand the hearing officer is to take a stipulation from the parties as to what body part sustained the soft tissue injury. If the parties are not willing to make a stipulation regarding the location of the soft tissue injury, the hearing officer is to make a determination on the location of the soft tissue injury, considering the evidence.

Once the hearing officer makes a determination regarding the soft tissue injury, the hearing officer is to advise the designated doctor regarding the soft tissue injury and its location. The hearing officer is also to inform the designated doctor that the [Date of Injury], compensable injury extends to a left knee contusion, a lumbar sprain/strain, a cervical sprain/strain, a jaw contusion, and a lip laceration. The hearing officer is also to inform the designated doctor that the compensable injury does not extend to a left knee sprain/strain, a left knee medial meniscus tear, and left knee chondromalacia. The hearing officer is to request the designated doctor to give an opinion on the claimant's

date of MMI and rate the entire compensable injury in accordance with the AMA Guides 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* Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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.

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge