APPEAL NO. 141644
FILED SEPTEMBER 29, 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 July 1, 2014, in Austin, 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 disc herniations at T12-L1, L4-5, and L5-S1 and lumbar stenosis; (2) the date of maximum medical improvement (MMI) is May 1, 2013, and (3) the appellant's (claimant) impairment rating (IR) is five percent.

The claimant appealed the hearing officer's MMI and IR determinations contending that it was error for the hearing officer to adopt a certification of MMI/IR based on a Report of Medical Evaluation (DWC-69) that was not signed by the certifying doctor. The respondent (carrier) responded by acknowledging in its reponse that the DWC-69 adopted by the hearing officer does not contain a signature from the certifying doctor. The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to disc herniations at T12-L1, L4-5, and L5-S1 and lumbar stenosis was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that: on [Date of Injury], the claimant sustained a compensable injury; the carrier has accepted as compensable a lumbar sprain; the Texas Department of Insurance, Division of Workers' Compensation (Division)-selected designated doctor, (Dr. W), certified that the claimant reached MMI on May 1, 2013, with a five percent IR; and the doctor referred by the treating doctor, Dr. (Dr. C), certified that the claimant has not reached MMI. The claimant testified that he felt a pop in his back when he jumped from the back of a truck while at work.

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 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 DWC-69 and a narrative report.

The hearing officer determined that the claimant reached MMI on May 1, 2013, with a five percent IR as certified by Dr. W, the designated doctor. Dr. W examined the claimant on June 18, 2013, and certified that the claimant reached MMI on May 1, 2013, and assessed a five percent IR for the lumbar spine. However, in evidence is the DWC-69 from Dr. W and it does not contain the certifying doctor's signature. 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; APD 101734, decided January 27, 2011; and APD 141332, decided August 11, 2014. Because the DWC-69 was not signed by Dr. W, 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 May 1, 2013, and that the claimant's IR is five percent.

The only other certification of MMI/IR in evidence is from Dr. C, the referral doctor. Dr. C certified that the claimant had not reached MMI. However, the DWC-69 was not signed by Dr. C, and his certification of MMI/IR cannot be adopted. *See* APD 100510, *supra*; APD 101734, *supra*; and APD 141332*, supra*.

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 reverse the hearing officer's determinations that the claimant's MMI date is May 1, 2013, and that the claimant's IR is five percent, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. W is the designated doctor in this case. 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 MMI and IR.

The hearing officer is to inform the designated doctor that the compensable injury of [Date of Injury], extends to a lumbar sprain. The hearing officer is to inform the designated doctor that the compensable injury of [Date of Injury], does not extend to disc herniations at T12-L1, L4-5, and L5-S1, and lumbar stenosis. 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 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 hearing officer is to inform the designated doctor that the certification of MMI/IR requires completion, signing, and submission of the DWC-69 and a narrative report pursuant to Rule 130.1(d)(1).

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

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge