

APPEAL NO. 141650
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 (CCH) was held on July 1, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 0%. The claimant appealed the hearing officer's determination, arguing that the 0% IR assigned by (Dr. T), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation cannot be adopted because Dr. T did not have all of the claimant's medical records necessary to make his IR determination. The respondent (carrier) responded, urging affirmance of the hearing officer's determination.

DECISION

Reversed and rendered.

The parties stipulated in part that the carrier accepted liability for a lumbar sprain/strain, a lumbar disc herniation at L4-5, and radiculopathy at L4-5; that the compensable injury does not extend to a L5-S1 disc bulge; and that the claimant reached statutory maximum medical improvement (MMI) as of January 30, 2014, as certified by Dr. T and (Dr. R), the treating doctor. The claimant testified he was injured while lifting cases of 3-liter sodas from a pallet.

The hearing officer determined that the claimant's IR is 0% as certified by Dr. T. Dr. T examined the claimant on February 25, 2014. 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), Dr. T placed the claimant in Diagnosis-Related Estimate (DRE) Lumbosacral Category I: Complaints or Symptoms for 0% impairment of the claimant's lumbar spine. Dr. T noted in his narrative report that "[t]he [claimant] indicated he has NOT had surgery for this injury. The [claimant] indicated he has had a surgical consultation in regards to this injury. The outcome of this consultation recommended lumbar surgery."

The claimant testified at the CCH that he underwent two surgeries for the compensable injury, the first in January 2013, and the second in November 2013. In evidence is an operative report dated January 24, 2013, noting the claimant underwent surgery for lumbar radicular syndrome secondary to foraminal disc herniation at right side L4-5. Also in evidence is an operative report dated November 14, 2013, noting the

claimant underwent surgery for lumbar radicular syndrome secondary to herniated disc at right side L4-5.

28 TEX. ADMIN. CODE § 127.10(a)(1) (Rule 127.10(a)(1)) provides in part that the treating doctor and insurance carrier shall provide to the designated doctor copies of all the injured employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor. See *also* Rules 127.10(a)(3) and 127.10(b).

It is clear from Dr. T's narrative report that he did not have all of the claimant's necessary medical records as required by Rule 127.10 when he determined the claimant's IR. See Appeals Panel Decision (APD) 132258, decided November 20, 2013, and APD 140123, decided March 14, 2014. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 0%.

There is one other MMI/IR certification in evidence, which is from Dr. R, the treating doctor. Dr. R examined the claimant on March 20, 2014, and certified the claimant reached MMI statutorily on January 30, 2014, with a 10% IR. Dr. R placed the claimant in DRE Lumbosacral Category III: Radiculopathy for 10% impairment of the claimant's lumbar spine based on objective signs of radiculopathy. Dr. R properly considered and rated the compensable injury. Accordingly, we render a new decision that the claimant's IR is 10% as certified by Dr. R.

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 900
DALLAS, TEXAS 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge