

APPEAL NO. 141731  
OCTOBER 14, 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 3, 2014, 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 dehydration at L1-2 and L5-S1, a disc protrusion at L5-S1, and right S1 radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 2, 2013; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed all of the hearing officer's determinations. The claimant argues that the evidence established the compensable injury extended to all of the claimed conditions, that he has not reached MMI, and because he has not reached MMI an IR cannot be assigned. The respondent (self-insured) responded, urging affirmance of the hearing officer's determinations.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], and that the self-insured has accepted a cervical sprain/strain and a lumbar sprain/strain. The claimant testified that he was injured while working in the bucket of a truck when a tree tied to the bucket fell and caused the bucket to swing.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to disc dehydration at L1-2 and L5-S1, a disc protrusion at L5-S1, and right S1 radiculopathy 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 May 2, 2013, with a zero percent IR as certified by (Dr. S), the designated doctor appointed by the Division to determine MMI, IR, and extent of the compensable injury.

Dr. S examined the claimant on August 8, 2013. Dr. S states in her narrative report that “[t]he date of [MMI] is May 8, 2013.” However, Dr. S's Report of Medical Evaluation (DWC-69) states that she certified the claimant reached clinical MMI on “[May 2, 2013].” There is no DWC-69 in evidence from Dr. S with a May 8, 2013, date of MMI.

There is an internal inconsistency between the MMI date Dr. S certified in her narrative report and the MMI date Dr. S certified on the DWC-69. Because the narrative report and DWC-69 list completely different dates regarding when the claimant reached MMI, we do not consider that internal inconsistency to be a clerical error that can be corrected. See Appeals Panel Decision (APD) 130739, decided May 7, 2013, and APD 141281, decided August 7, 2014. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on May 2, 2013.

With regard to the IR, Rule 130.1(c)(3) provides that an assignment of IR shall be based on the claimant's condition as of the MMI date. Given that we have reversed the hearing officer's MMI determination, we also reverse the hearing officer's determination that the claimant's IR is zero percent.

There are several other MMI/IR certifications in evidence. Dr. S provided alternate MMI/IR certifications that the claimant has not reached MMI if the compensable injury includes the disputed conditions. Dr. S's alternate MMI/IR certifications cannot be adopted.

(Dr. T), the treating doctor, also certified that the claimant has not reached MMI based on diagnoses of a nerve root injury in the lumbar spine and bilateral radiculitis of the cervical spine. The hearing officer's determination that the compensable injury of

[Date of Injury], does not extend to disc dehydration at L1-2 and L5-S1, a disc protrusion at L5-S1, and right S1 radiculopathy has been affirmed as explained above, and the parties stipulated that the self-insured has accepted a cervical sprain/strain and a lumbar sprain/strain. Bilateral radiculitis of the cervical spine was not litigated at the CCH as being part of the compensable injury. Dr. T's MMI/IR certification considers a condition that has not at this time been determined to be part of the compensable injury. Accordingly, his MMI/IR certification cannot be adopted.

There is one other MMI/IR certification in evidence, which is from (Dr. L), a referral doctor. Dr. L examined the claimant on April 19, 2013, and certified that the claimant reached MMI on April 11, 2013, with a zero percent 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), Dr. L placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints or Symptoms for zero percent based on the claimant's cervical sprain, and placed the claimant in DRE Lumbosacral Category I: Complaints or Symptoms for zero percent based on the claimant's lumbar sprain. Dr. L considered and rated the entire compensable injury. Accordingly, we render a new decision that the claimant reached MMI on April 11, 2013, with a zero percent IR.

### **SUMMARY**

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to disc dehydration at L1-2 and L5-S1, a disc protrusion at L5-S1, and right S1 radiculopathy.

We reverse the hearing officer's determinations that the claimant reached MMI on May 2, 2013, with a zero percent IR, and we render a new decision that the claimant reached MMI on April 11, 2013, with a zero percent IR.

The true corporate name of the insurance carrier is **CITY OF DALLAS (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DEBORAH WATKINS  
1500 MARILLA, 5D SOUTH  
DALLAS, TEXAS 75201.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge