

APPEAL NO. 141797
FILED OCTOBER 10, 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 23, 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 trigger finger to the left third digit, carpal tunnel syndrome (CTS), an injury to the left shoulder in the form of a cyst, and a fracture to the left hand; (2) the appellant (claimant) reached maximum medical improvement (MMI) on July 11, 2013; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, and IR. The claimant contends on appeal that the evidence presented established a causal connection between the disputed conditions and the compensable injury. The claimant also alleged the designated doctor appointed for extent of injury failed to address the disputed conditions. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that: (1) on [Date of Injury], the claimant sustained a compensable injury; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. M) to provide an opinion regarding the date of MMI, IR, and the extent of the compensable injury; (3) Dr. M, the designated doctor, certified that the claimant reached MMI on August 8, 2013, with a three percent IR; and (4) the post-designated doctor required medical examination doctor, (Dr. Ma) certified that the claimant reached MMI on July 11, 2013, with a zero percent IR. The claimant testified that she was carrying a bag of trash through a set of double doors when the doors closed on her left hand. The carrier stated at the CCH that it accepted a left hand laceration and contusion.

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to trigger finger of the left third digit and a fracture of the left hand is supported by sufficient evidence and is affirmed.

As previously noted, Dr. M was appointed by the Division to opine on the extent of the claimant's compensable injury. In evidence was the Request for Designated

Doctor Examination (DWC-32) dated April 29, 2014, which was requested by the claimant for the purpose of the designated doctor providing an opinion on the extent of the compensable injury. The DWC-32 lists the injuries in question, claimed to be caused by, or naturally resulting from the accident or incident, as follows: trigger finger at digits two through five of the left hand, lump in the left shoulder, left hand CTS, left hand fracture, and left hand laceration. As previously noted, the carrier accepted a left hand laceration and contusion and the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to a fracture of the left hand is affirmed.

Dr. M examined the claimant for purposes of giving an opinion regarding the extent of the compensable injury on [Date of Injury]. Dr. M noted that the claimant had tenderness to palpation in the left hand as well as the costo-vertebral articulations inside the left scapula. Further, Dr. M noted that the claimant had no hypersensitivity to light touch and that all upper extremity reflexes, pulses, and sensations were normal and symmetrical. Dr. M diagnosed the claimant with left third digit sprain/strain, and trigger finger. Dr. M stated that the claimant had "some other issues now but much of it appears to do with her lack of use of the left arm and hand." Dr. M also noted that there was some initial discussion about a fracture but none was verified.

In her discussion of the evidence, the hearing officer stated that the opinion provided by the designated doctor failed to explain or address how the mechanism of injury would cause a trigger finger of the third digit of the left hand and his opinion was inconsistent with the findings documented by the designated doctor in a previous examination that found "there does not appear to be any triggering of the middle finger." The hearing officer specifically noted in her discussion that the designated doctor did not provide an opinion regarding the diagnosis of CTS.

Section 408.0041(a)(3) provides that at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the extent of the employee's compensable injury. See also 28 TEX. ADMIN. CODE § 127.1(a)(3) (Rule 127.1(a)(3)). Rule 127.220(a)(2) provides that designated doctor narrative reports must be filed in the form and manner required by the Division and at a minimum provide a clearly defined answer for each question to be addressed by the designated doctor examination.

In the instant case, the parties stipulated that Dr. M was appointed by the Division to provide an opinion on the extent of the compensable injury. The hearing officer specifically stated that the designated doctor did not provide an opinion regarding the diagnosis of CTS, a condition that was specifically listed on the DWC-32 for the designated doctor to address. We note that the designated doctor also failed to provide

an opinion regarding the diagnosis of an injury to the left shoulder in the form of a cyst. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to CTS or an injury to the left shoulder in the form of a cyst and remand to the hearing officer for further action consistent with this decision.

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 401.011(24) defines IR as the percentage of permanent impairment of the whole body resulting from a compensable injury. Rule 130.1(c)(1) states that an IR is the percentage of permanent impairment of the whole body resulting from the current compensable injury. Because we have reversed and remanded a portion of the extent of the compensable injury determination, we also reverse and remand the hearing officer's determination of MMI and IR.

REMAND INSTRUCTIONS

Dr. M is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. M is still qualified and available to be the designated doctor. If Dr. M is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to give an opinion on the extent of the compensable injury and if necessary, MMI and IR.

The hearing officer is to send a letter of clarification to the designated doctor to request that he give an opinion, along with an explanation, regarding whether or not the compensable injury sustained on [Date of Injury], extends to CTS and/or an injury to the left shoulder in the form of a cyst. The parties are to be provided with the response from the designated doctor giving his opinion regarding the extent of the compensable injury and are to be allowed an opportunity to respond. The hearing officer should then make a determination regarding whether the compensable injury sustained on [Date of Injury], extends to CTS and/or an injury to the left shoulder in the form of a cyst. The hearing officer should then make a determination of MMI/IR considering the entire compensable injury. If necessary, the hearing officer should send a letter of clarification to the designated doctor to obtain a certification of MMI/IR that rates the entire compensable injury.

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 **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge