

APPEAL NO. 142126
FILED DECEMBER 19, 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 August 6, 2014, with the record closing on August 27, 2014, in Fort Worth, 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], extends to aggravation of left hip osteoarthritis and degenerative joint disease; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 21, 2013; and (3) the claimant's impairment rating (IR) is two percent. The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The claimant contends that the certification adopted by the hearing officer did not rate the entire compensable injury. The appeal file does not contain a response from the respondent (self-insured).

The hearing officer's determination that the compensable injury of [Date of Injury], extends to aggravation of left hip osteoarthritis and degenerative joint disease was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the compensable injury includes at least a left knee sprain/strain and meniscus tear and a left hip sprain/strain and that (Dr. V) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) with regard to MMI, IR, and extent of injury. As previously noted the hearing officer's determination that the compensable injury extends to aggravation of left hip osteoarthritis and degenerative joint disease has become final pursuant to Section 410.169. The claimant testified that he was injured when he stepped in a hole while walking down a steep incline of a driveway while working.

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.

Dr. V examined the claimant on July 25, 2013, and certified the claimant reached MMI on May 21, 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) (AMA Guides). Dr. V listed the diagnoses of left knee sprain/strain and left hip sprain/strain in his narrative report. Dr. V certified May 21, 2013, as the date of MMI because it is "the last note available in the chart in which he was seen by a doctor. . . ." Dr. V stated that the claimant had loss of range of motion (ROM) in his left hip but that it was not related to the accepted condition of the hip sprain/strain. Dr. V did not consider or rate the accepted condition of left knee meniscus tear or aggravation of left hip osteoarthritis and degenerative joint disease. The hearing officer's finding that Dr. V's certification of MMI of May 21, 2013, with an IR of zero percent is contrary to the preponderance of the evidence is supported by sufficient evidence.

The hearing officer determined that the claimant reached MMI on May 21, 2013, with a two percent IR based on the only other certification of MMI and IR in evidence. (Dr. C), a doctor selected by the treating doctor to act in place of the treating doctor, examined the claimant on September 20, 2013, and certified that the claimant reached MMI on May 21, 2013, with a two percent IR. Dr. C noted the following impressions in his narrative report: left knee pain status post surgery, left knee sprain, internal derangement, and chondromalacia patella. Dr. C assessed two percent impairment based on Table 62 on page 3/83 citing the footnote underneath Table 62 which states: "[i]n a patient with a history of direct trauma, a complaint of patellofemoral pain, and crepitation on physical examination, but without joint space narrowing on roentgenograms, a [two] percent whole-person . . . impairment is given." Dr. C noted the claimant had limited ROM in his left hip when compared to the right side but did not assess impairment for the claimant's left hip. Dr. C did not consider or rate a left hip sprain/strain, aggravation of left hip osteoarthritis or degenerative joint disease. Accordingly, Dr. C's certification of MMI and IR cannot be adopted. Consequently, we reverse the hearing officer's determination that the claimant reached MMI on May 21, 2013, with a two percent IR.

There is no other certification in evidence which 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 determination that the claimant reached MMI on May 21, 2013, and remand the issue of MMI to the hearing officer.

We reverse the hearing officer's determination that the claimant's IR is two percent and remand the issue of IR to the hearing officer.

REMAND INSTRUCTIONS

Dr. V is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. V is still qualified and available to be the designated doctor. If Dr. V 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 for the [Date of Injury], compensable injury.

The hearing officer is to advise the designated doctor that the compensable injury of [Date of Injury], includes a left knee sprain/strain and meniscus tear, a left hip sprain/strain, and aggravation of left hip osteoarthritis and degenerative joint disease.

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 **CITY OF FORT WORTH (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MARY J. KAYSER, CITY SECRETARY
1000 THROCKMORTON
FORT WORTH, TEXAS 76102.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge