

APPEAL NO. 142282
FILED DECEMBER 18, 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 September 18, 2014, in Dallas, 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 a cervical sprain or strain or a thoracic sprain or strain; (2) the appellant (claimant) did not have disability, resulting from an injury sustained on [Date of Injury], from October 25, 2013, through the date of the CCH; (3) the claimant reached maximum medical improvement (MMI) on October 10, 2013; and (4) the claimant had no permanent impairment. The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, that the claimant did not have disability for the time period in dispute, and that the claimant reached MMI on October 10, 2013, with no permanent impairment. The claimant argues that the evidence established that he had neck, back, and head complaints since the day of the injury and that the compensable injury prevented him from performing his pre-injury work duties. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, disability, MMI and impairment rating (IR) determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on [Date of Injury], the claimant sustained a compensable injury and the compensable injury extends to a head laceration. The claimant testified he was hit in the head by lumber while working for the employer. The claimant testified that he received four stitches in his head.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to a cervical sprain or strain or a thoracic sprain or strain is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant did not have disability, resulting from an injury sustained on [Date of Injury], from October 25, 2013, through the CCH 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 parties stipulated that the Division appointed (Dr. P) as the designated doctor to determine MMI and IR. Dr. P examined the claimant on January 24, 2014, and certified that the claimant had not reached MMI. Dr. P considered the following diagnoses in his certification: head/scalp laceration, cervical sprain/strain, and thoracic sprain/strain. Dr. P opined that the claimant should reach MMI in three months, stating in part that the claimant should finish physical therapy and chiropractic treatment. The hearing officer found that the certification from Dr. P is contrary to the preponderance of the other medical evidence. That finding is supported by the evidence. As previously noted, the hearing officer’s determination that the [Date of Injury], compensable injury does not extend to a cervical sprain or strain or a thoracic sprain or strain has been affirmed. Dr. P considered and rated conditions that were not part of the compensable injury and his certification cannot be adopted.

Rule 130.1(c)(3) provides in pertinent part that the assignment of an IR shall be based on the injured worker’s condition as of the MMI date considering the medical records and the certifying examination and the doctor assigning the IR shall:

- A. identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;
- B. document specific laboratory or clinical findings of an impairment;
- C. analyze specific clinical and laboratory findings of an impairment;

- A. compare the results of the analysis with the impairment criteria and provide the following:
- (i) [a] description and explanation of specific clinical findings related to each impairment, including [zero percent] [IRs]; and
 - (ii) [a] description of how the findings relate to and compare with the criteria described in the applicable chapter of 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)]. The doctor's inability to obtain required measurements must be explained.

Rule 130.1(d)(1) provides in part that a certification of MMI, determination of permanent impairment, and assignment of an IR (if permanent impairment exists) for the current compensable injury requires completion, signing, and submission of the Report of Medical Evaluation (DWC-69) and a narrative report.

- B. The [DWC-69] includes an attached narrative report. The narrative report must include the following:
- (i) date of the certifying examination;
 - (ii) date of MMI;
 - (iii) findings of the certifying examination, including both normal and abnormal findings related to the compensable injury and an explanation of the analysis performed to find whether MMI was reached;
 - (iv) narrative history of the medical condition that outlines the course of the injury and correlates the injury to the medical treatment;
 - (v) current clinical status;
 - (vi) diagnosis and clinical findings of permanent impairment as stated in subsection (c)(3);
 - (vii) the edition of the AMA Guides that was used in assigning the IR (if the injured employee has permanent impairment); and
 - (viii) a copy of the authorization if, after September 1, 2003, the doctor received authorization to assign an IR and certify MMI by exception granted from the Division.

The hearing officer determined that the claimant reached MMI on October 10, 2013, with no permanent impairment as certified by (Dr. K). In his DWC-69 dated October 10, 2013, based on an examination of that date, Dr. K certified MMI on October 10, 2013 (8 days after the [Date of Injury], date of injury) with no permanent impairment. There is no narrative or information required by Rule 130.1(c)(3), cited above, attached or associated with the DWC-69. In evidence is a progress note dated October 10,

2013, which indicates that the claimant's head was assessed. However, that note does not assign an IR and gives no indication that it was prepared for an assessment of MMI/IR. The note states "sutures intact" and notes the claimant has headaches and intermittent pain. The hearing officer, in a finding of fact, finds that the October 10, 2013, date of MMI with no permanent impairment certified by Dr. K is supported by a preponderance of the evidence. For the reasons stated above, namely that there is no accompanying narrative, and a progress note of the same date as the DWC-69 does not meet the requirements of Rule 130.1, the hearing officer's finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. See Appeals Panel Decision (APD) 132911, decided February 18, 2014, and APD 120383, decided April 20, 2012. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on October 10, 2013, with no permanent impairment.

The only other certification in evidence was from (Dr. M), a carrier-selected required medical examination doctor. Dr. M examined the claimant on May 28, 2014, and certified that the claimant reached MMI on December 2, 2013, with a zero percent IR. Dr. M considered and rated the following conditions: head laceration, cervical sprain, and thoracic sprain. Dr. M stated that the claimant "should have reached [MMI] for a head laceration, cervical strain, and thoracic strain no later than 60 days post his injury since it was not even clearly documented early on that he had significant neck or back problems. Therefore I would place him at [MMI] as of [December 2, 2013]." As previously noted, the hearing officer's determination that the [Date of Injury], compensable injury does not extend to a cervical sprain or strain or a thoracic sprain or strain has been affirmed. Dr. M considered and rated conditions that were not part of the compensable injury and his certification cannot be adopted.

There is no other certification of MMI and IR in evidence. Consequently, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to a cervical sprain or strain or a thoracic sprain or strain.

We affirm the hearing officer's determination that the claimant did not have disability, resulting from an injury sustained on [Date of Injury], from October 25, 2013, through the CCH.

We reverse the hearing officer's determination that the claimant reached MMI on October 10, 2013, with no permanent impairment. We remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

The designated doctor for MMI and IR is Dr. P. On remand, the hearing officer is to determine if Dr. P is still qualified and available to serve as the designated doctor. If Dr. P is no longer qualified or available to serve as the designated doctor, another designated doctor is to be appointed pursuant to applicable rules to give an opinion on MMI and IR for the compensable injury. The hearing officer is to inform the designated doctor that the compensable injury includes a head laceration but does not include a cervical sprain or strain or a thoracic sprain or strain. The designated doctor is to rate the compensable injury in accordance with the AMA Guides, based on the claimant's condition as of the date of MMI and in accordance with Rule 130.1(c). The hearing officer is to provide the letter sent to the designated doctor and the designated doctor's response to the parties and allow the parties to respond. The hearing officer is then to make a determination on MMI and IR that is supported by the evidence and is 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 **PROPERTY AND CASUALTY INSURANCE COMPANY OF HARTFORD** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge