

APPEAL NO. 142324
FILED DECEMBER 22, 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 24, 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], does not extend to lumbar disc herniations, lumbar radiculitis, lumbar chronic pain syndrome, lumbar facet syndrome, and lumbar facet arthropathy; (2) the appellant/cross-respondent (claimant) did not have disability resulting from the [Date of Injury], compensable injury beginning on October 12, 2013, and continuing through March 12, 2014, and from May 2, 2014, and continuing through the date of the September 24, 2014, CCH; (3) the claimant reached maximum medical improvement (MMI) on February 15, 2014; (4) the claimant's impairment rating (IR) is zero percent; and (5) the claimant is entitled to change treating doctors to (Dr. W) pursuant to Section 408.022.

The claimant appealed the hearing officer's determinations that the compensable injury does not extend to lumbar disc herniations, lumbar radiculitis, lumbar chronic pain syndrome, lumbar facet syndrome, and lumbar facet arthropathy alleging that Dr. W provided sufficient causation to establish that the compensable injury extended to the disputed conditions at issue. The claimant additionally disputes the hearing officer's determinations of MMI, IR, and disability. The respondent/cross-appellant (carrier) responded, urging affirmance of the hearing officer's determinations of the extent of the compensable injury, disability, and IR. The carrier also filed a cross-appeal, arguing that the hearing officer's determination that the claimant reached MMI on February 15, 2014, is incorrect. The carrier contends that the only certification in evidence that rates the conditions accepted by the carrier certified the claimant reached MMI on December 14, 2013. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

The hearing officer's determination that the claimant is entitled to change treating doctors to Dr. W pursuant to Section 408.022 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], that includes at least a lumbar sprain/strain, a thoracic sprain/strain, and a

right shoulder sprain/strain. Additionally, we note that the hearing officer incorrectly recited stipulation 1.E. in his decision and order. The decision notes in stipulation 1.E. that on February 15, 2014, the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, (Dr. K) certified that the claimant reached MMI on February 15, 2013, with an IR of zero percent. However, a review of the record reflects that the parties actually stipulated that on February 15, 2014, Dr. K certified that the claimant reached clinical MMI on December 14, 2013, with an IR of zero percent for the accepted conditions of lumbar sprain/strain, thoracic sprain/strain, and a right shoulder sprain/strain. We reform the hearing officer's decision to correct stipulation 1.E. to the parties' actual stipulation at the CCH. The claimant testified that he was injured when he fell off a loading dock when a truck unexpectedly drove off. The claimant testified that he landed on his back and that his supervisor fell on top of him. A DVD of the claimant's fall was admitted into evidence.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to lumbar disc herniations, lumbar radiculitis, lumbar chronic pain syndrome, lumbar facet syndrome, and lumbar facet arthropathy is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant did not have disability resulting from the [Date of Injury], compensable injury beginning on October 12, 2013, and continuing through March 12, 2014, and from May 2, 2014, and continuing through the date of the September 24, 2014, CCH is supported by sufficient evidence and is affirmed.

IR

The hearing officer's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

MMI

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.

Dr. K, the designated doctor, examined the claimant on February 15, 2014, for the purpose of certifying MMI/IR. Dr. K provided four certifications of MMI/IR considering different conditions. The certifications from Dr. K were the only certifications of MMI/IR in evidence. The certifications from Dr. K were the only certifications of MMI/IR in evidence. We note that all four of Dr. K's certifications assigned a zero percent IR.

The first certification considered only a thoracic sprain/strain and certified that the claimant reached MMI on August 2, 2013. The second certification considered both a thoracic sprain/strain and a lumbar sprain/strain and certified that the claimant reached MMI on December 14, 2013. The third certification considered a thoracic sprain/strain, a lumbar sprain/strain, and a right shoulder sprain/strain, the specific conditions the parties stipulated that are included in the compensable injury. The third certification certified that the claimant reached MMI on December 14, 2013.

A fourth certification considered a thoracic sprain/strain, a lumbar sprain/strain, a right shoulder sprain/strain, and lumbar facet syndrome and certified that the claimant reached MMI on February 15, 2014. The hearing officer's determination that the compensable injury does not extend to lumbar facet syndrome has been affirmed. Therefore, Dr. K's fourth certification considers and rates a condition that has been determined not to be part of the compensable injury.

The hearing officer mistakenly determined that the claimant reached MMI on February 15, 2014, the date of the examination for the conditions determined to be compensable rather than the date Dr. K actually certified that the claimant reached MMI (December 14, 2013) when considering the conditions included in the compensable injury by stipulation of the parties. Consequently, we reverse the hearing officer's determination that the claimant reached MMI on February 15, 2014, and render a new decision that the claimant reached MMI on December 14, 2013, to conform to the evidence.

SUMMARY

We reform stipulation 1.E. to read as follows: On February 15, 2014, Dr. K certified that the claimant reached clinical MMI on December 14, 2013, with an IR of zero percent for the accepted conditions of lumbar sprain/strain, thoracic sprain/strain, and a right shoulder sprain/strain.

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to lumbar disc herniations, lumbar radiculitis, lumbar chronic pain syndrome, lumbar facet syndrome, and lumbar facet arthropathy.

We affirm the hearing officer's determination that the claimant did not have disability resulting from the [Date of Injury], compensable injury beginning on October 12, 2013, and continuing through March 12, 2014, and from May 2, 2014, and continuing through the date of the September 24, 2014.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

We reverse the hearing officer's determination that the claimant reached MMI on February 15, 2014, and render a new decision that the claimant reached MMI on December 14, 2013, to conform to the evidence.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**DAVID SARGENT
901 MAIN STREET, SUITE 5200
DALLAS, TEXAS 75202-3705.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge