APPEAL NO. 142371
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 Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) (Dr. B)'s first certification of maximum medical improvement (MMI) and determination of no permanent impairment did become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (2) the appellant (claimant) reached MMI on February 11, 2013; (3) the claimant has no permanent impairment as a result of the compensable injury; and (4) the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning February 11, 2013, and continuing through the September 24, 2014, CCH.

The claimant appealed the hearing officer's determinations regarding finality of Dr. B's MMI/impairment rating (IR) certification, MMI, and IR on a sufficiency of the evidence point of error. The respondent (self-insured) responded, urging affirmance of the hearing officer's determinations. The hearing officer's determination that the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning February 11, 2013, and continuing through the September 24, 2014, CCH was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The parties stipulated in part that the self-insured has accepted a compensable injury on this claim at least in the form of cervical sprain/strain (we note that the hearing officer's Finding of Fact No. 1.D. omits "strain," which was stipulated to by the parties at the CCH), left shoulder sprain, left arm sprain, left hip contusion, and left leg sprain, and

that the claimant did not timely dispute Dr. B's February 11, 2013, certification within 90 days after the date the rating was provided by verifiable means on February 15, 2013.

The claimant contended that Dr. B's February 11, 2013, certification did not become final because an exception in Section 408.123(f)(1)(B), a previously undiagnosed condition, applies. Specifically, the claimant argued that the condition of a cervical sprain/strain, a condition the self-insured accepted as stipulated to by the parties at the CCH, was undiagnosed prior to Dr. B's February 11, 2013, certification. The claimant pointed out that Dr. B changed his diagnoses to include a cervical sprain/strain when she saw him again the next day, February 12, 2013.

The hearing officer found in Finding of Fact No. 5 that "[n]one of the exceptions to 90-day finality in [Section 408.123(f)] were shown to apply in this case," and therefore determined that Dr. B's February 11, 2013, MMI/IR certification became final under Section 408.123 and Rule 130.12. The hearing officer explained her rationale in the Discussion portion of the decision as follows:

> there was no compelling medical evidence of a previously undiagnosed condition, given that the medical records indicated that on February 7, 2013, [the] [c]laimant never reported a cervical injury and that on February 11, 2013, [the] [c]laimant reported that her overall symptoms . . . had resolved.

Section 408.123(e) provides that except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means; that the notice must contain a copy of a valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c); and that the 90-day period begins on the day after the written notice is delivered to the party wishing to dispute a certification of MMI or an IR assignment, or both.

Section 408.123 provides:

(f) An employee's first certification of [MMI] or assignment of an [IR] may be disputed after the period described by Subsection (e) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the [IR];
(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or
(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid.

The hearing officer found that none of the exceptions to 90-day finality pursuant to Section 408.123(f) were shown to apply in this case. We agree, though we disagree with the hearing officer's rationale in determining whether there was compelling medical evidence of a previously undiagnosed medical condition under Section 408.123(f)(1)(B).

The hearing officer indicates in the Discussion portion of her decision that a finality exception of compelling medical evidence of a previously undiagnosed condition does not apply because the claimant did not report a cervical injury on February 7, 2013, the first date the claimant sought medical care for her injury, and because the claimant reported on February 11, 2013, that her overall symptoms had resolved. However, in evidence is a medical record dated February 8, 2013, which includes the diagnosis of bilateral neck sprain. The parties stipulated that the self-insured has accepted a cervical sprain/strain injury. The question specifically before the hearing officer in this case was whether a cervical sprain/strain was a previously undiagnosed medical condition. Given that a cervical sprain/strain was diagnosed on February 8, 2013, the exception of a previously undiagnosed condition in Section 408.123(f)(1)(B) does not apply.

The record contained no compelling medical evidence to establish any exception contained in Section 408.123(f): there was no compelling medical evidence that Dr. B made a significant error in applying the appropriate 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) or in calculating the IR; there was no compelling medical evidence of a clearly mistaken diagnosis or a previously undiagnosed medical condition; there was no compelling medical evidence that the claimant received improper or inadequate treatment of the injury prior to Dr. B's February 11, 2013, MMI/IR certification.

As the record contains no compelling medical evidence of any of the exceptions contained in Section 408.123(f), the hearing officer's finding that none of the exceptions were shown to apply in this case is supported by the evidence. Therefore, we affirm the hearing officer's determination that Dr. B's first certification of MMI and determination of no permanent impairment did become final under Section 408.123 and Rule 130.12.

**MMI/IR**

The hearing officer's determinations that the claimant reached MMI on February 11, 2013, and that the claimant has no permanent impairment as a result of the compensable injury is supported by sufficient evidence and is affirmed.

The true corporate name of the insurance carrier is **HUMBLE INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**GUY M. SCONZO**
**20200 EASTWAY VILLAGE DRIVE**
**HUMBLE, TEXAS 77338.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge