APPEAL NO. 142393
FILED JANUARY 05, 2015

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 29, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. With regard to the issues before her, the hearing officer determined that: (1) the [Date of Injury], compensable injury does not extend to chondromalacia; (2) the appellant/cross-respondent (claimant) has not reached maximum medical improvement (MMI) and therefore no impairment rating (IR) has been assigned; and (3) the claimant had disability beginning on November 2, 2013, and continuing through the date of the CCH.

The claimant appealed the hearing officer's determination regarding extent of the compensable injury, contending that the medical records in evidence establish the compensability of the disputed condition. The respondent/cross-appellant (carrier) appealed the hearing officer's determinations that the claimant has not reached MMI and therefore no IR has been assigned. The carrier additionally appealed the hearing officer's disability determination. The carrier responded to the claimant's appeal, urging affirmance for the issue on which it prevailed. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on [Date of Injury],[1] the claimant sustained a compensable injury at least in the form of a bilateral knee sprain/strain. The claimant testified that she was injured when she tripped and fell onto her hands and knees.

DISABILITY AND EXTENT OF INJURY

The hearing officer's determinations that: (1) the [Date of Injury], compensable injury does not extend to chondromalacia; and (2) the claimant had disability beginning on November 2, 2013, and continuing through the date of the CCH are supported by sufficient evidence and are affirmed.

MMI/IR

[1] We note that in the Discussion section of the decision, the hearing officer incorrectly states that the date of the compensable injury is August 12, 3013, instead of [Date of Injury].

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 hearing officer determined that the claimant has not reached MMI based on the opinion of r (Dr. N). Dr. N based his opinion on (Dr. H) recommendation that the claimant undergo an MR arthrogram so that he could assess the claimant from a surgical prospective. In a medical report dated August 27, 2014, Dr. H explained that he recommended the MR arthrogram to better delineate whether the claimant has a medial meniscus tear. In a subsequent medical report dated September 24, 2014, Dr. H recommended a diagnostic arthroscopy of the claimant's right knee to evaluate for an internal derangement. However, as noted above, the parties stipulated that the compensable injury is at least a bilateral knee sprain/strain, and the hearing officer's determination that the [Date of Injury], compensable injury does not extend to chondromalacia has been affirmed. Additionally, internal derangement and medial meniscus tear are conditions that have not been accepted or administratively determined to be compensable. As Dr. N's opinion that the claimant has not reached MMI is based on conditions that are not compensable, the hearing officer's determination that the claimant has not reached MMI based on that opinion is not supported by sufficient evidence. Accordingly, we reverse the hearing officer's determinations that the claimant has not reached MMI and therefore no IR has been assigned.

The Division appointed Dr. W) as the designated doctor to determine the claimant's MMI and IR. Dr. W examined the claimant on January 11, 2014, and certified that she reached MMI on November 1, 2013, with a zero percent whole person impairment 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) based on the range of motion measurements of the bilateral knees. Dr. W considered a bilateral knee sprain/strain and stated that the claimant's clinical condition stabilized as of November 1, 2013. Dr. W considered and rated the compensable injury and his certification of MMI and IR is supported by the evidence. Accordingly, we render a new decision that the claimant reached MMI on November 1, 2013, with a zero percent IR.

SUMMARY

We affirm the hearing officer's determination that the [Date of Injury], compensable injury does not extend to chondromalacia.

We affirm the hearing officer's determination that the claimant had disability beginning on November 2, 2013, and continuing through the date of the CCH.

We reverse the hearing officer's determination that the claimant has not reached MMI, and therefore no IR has been assigned, and we render a new decision that the claimant reached MMI on November 1, 2013, with a zero percent IR.

The true corporate name of the insurance carrier is **PRAETORIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge