APPEAL NO. 142544
FILED JANUARY 16, 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 October 28, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 0%. The claimant appealed the hearing officer's determination, contending that the evidence supports his assertion that his IR is 19% as certified by (Dr. B), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division). The respondent (self-insured) responded, urging affirmance of the hearing officer's determination.

DECISION

Reversed and remanded, as reformed.

The parties stipulated that the claimant's [Date of Injury], compensable injury consists of sprains/strains to the claimant's bilateral shoulders, neck, bilateral arms, cervical, thoracic, and lumbar, and an injury to the head. The parties also stipulated that the date the claimant reached maximum medical improvement (MMI) was June 1, 2013, as certified by Dr. B and (Dr. H), the post-designated doctor required medical examination (RME) doctor. The claimant testified he was injured in a motorcycle accident.

EVIDENCE PRESENTED

At the CCH the hearing officer admitted self-insured's exhibits A through F. However, the decision incorrectly reflects that self-insured's exhibits A through E were admitted. We reform the hearing officer's decision to state that self-insured's exhibits A through F were admitted into evidence to reflect the correct exhibits admitted at the CCH.

IR

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's IR is 0% as certified by Dr. H, the post-designated doctor RME doctor.

Dr. H examined the claimant on December 18, 2013, and certified that the claimant reached MMI on June 1, 2013, the stipulated date of MMI in this case, with a 0% 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. H placed the claimant in Diagnosis-Related Estimate (DRE) Category I: Complaints or Symptoms for 0% impairment for both the claimant's cervical and lumbar spine. Dr. H also assessed 0% impairment based on range of motion measurements taken of the claimant's right arm. Dr. H also discussed the diagnosis of a concussion and that the claimant's brain CT was normal. As noted above, the parties stipulated that the claimant's compensable injury consists of sprains/strains to the claimant's bilateral shoulders, neck, bilateral arms, cervical, thoracic, and lumbar, and an injury to the head. Dr. H failed to consider and rate the claimant's thoracic sprain/strain, a condition the parties stipulated is a part of the compensable injury. As Dr. H failed to consider and rate the entire compensable injury, his MMI/IR certification cannot be adopted. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 0%.

There is one other MMI/IR certification in evidence, which is from Dr. B, the designated doctor. The hearing officer found that Dr. B's MMI/IR certification was contrary to the preponderance of the evidence.

Dr. B examined the claimant on July 12, 2013, and certified that the claimant reached MMI on the stipulated date of June 1, 2013, with a 19% IR. Dr. B placed the claimant in DRE Category I: Complaints or Symptoms for 0% impairment for the claimant's cervical, thoracic, and lumbar spine. Dr. B also assessed 0% impairment for the claimant's head injury. Dr. B noted that a full physical examination was carried out, in addition to a neurologic examination, to evaluate for impairment "as a result of the brachial plexus injury." Based on physical examination findings, Dr. B opined that the claimant's injury was "best rated per page [3/53] of the [AMA] Guides for brachial plexus related impairment." Using Table 11a on page 3/48, Table 12 on page 3/49, and Table 14 on page 3/52 of the AMA Guides, Dr. B assessed 19% whole person impairment for a brachial plexus injury.

However, the parties neither stipulated nor actually litigated at the CCH that the compensable injury extends to a brachial plexus injury. Dr. B's MMI/IR certification

considers and rates a condition that has not at this time been determined to be part of the compensable injury. The hearing officer's finding that Dr. B's MMI/IR certification was contrary to the preponderance of the evidence is supported by sufficient evidence. Accordingly, Dr. B's 19% IR cannot be adopted.

As there is no IR in evidence that can be adopted, we remand the issue of IR to the hearing officer for further action consistent with this decision.

SUMMARY

We reform the hearing officer's decision to state that self-insured's exhibits A through F were admitted into evidence to reflect the correct exhibits admitted at the CCH.

We reverse the hearing officer's determination that the claimant's IR is 0%, and we remand the issue of IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. B is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. B is still qualified and available to be the designated doctor. If Dr. B 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 IR for the [Date of Injury], compensable injury as of June 1, 2013, the date of MMI in this case.

On remand the hearing officer is to send a letter of clarification to Dr. B, if he is still qualified and available to serve as the designated doctor, informing him that an injury to the claimant's brachial plexus has not at this time been determined to be compensable.

The hearing officer is to notify the designated doctor that the date of MMI in this case is June 1, 2013, and is to request the designated doctor to assign an IR based on the June 1, 2013, date of MMI considering the medical records and the certifying examination. The hearing officer is also to notify the designated doctor that the compensable injury of [Date of Injury], extends to sprains/strains to the claimant's bilateral shoulders, neck, bilateral arms, cervical, thoracic, and lumbar, and an injury to the head. A copy of the designated doctor's response and IR is to be provided to both parties and the parties are to be given an opportunity to respond. The hearing officer is then to make a determination on IR as of the June 1, 2013, date of MMI that is supported by the evidence.

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

ANNA RUSSELL - CITY SECRETARY
900 BAGBY
HOUSTON, TEXAS 77002.

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge