

APPEAL NO. 142602
FILED JANUARY 29, 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 22, 2014, with the record closing on October 17, 2014, in Houston, 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 photophobia, phonophobia, chronic obstructive pulmonary disorder (COPD), post-traumatic stress disorder (PTSD), an aggravation of bipolar disorder, panic disorder, chronic pain syndrome, depression, anxiety, dizziness or headaches; (2) the appellant (claimant) reached maximum medical improvement (MMI) on October 12, 2012; (3) the claimant's impairment rating (IR) is 6%; and (4) the claimant had disability from the compensable injury of [Date of Injury], during the period beginning October 13, 2012, and continuing through the date of the September 22, 2014, CCH. The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, and IR. The claimant contended on appeal that there is sufficient causation evidence to prove the compensability of the conditions in dispute, and therefore, the claimant has not reached MMI due to the need for additional treatment for these conditions. The respondent (carrier) responded, urging affirmance of the disputed determinations.

The hearing officer's determination that the claimant had disability from the compensable injury of [Date of Injury], during the period beginning October 13, 2012, and continuing through the date of the September 22, 2014, CCH was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that: the carrier has accepted a compensable injury on this claim to include a chemical burn to the eyes; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. T) as the designated doctor for the purposes of MMI, IR, and extent of injury; and Dr. T certified that the claimant reached MMI as of October 12, 2012, with a 6% IR. The claimant testified that he was injured when he opened a gas can and hot gas splashed onto his face and body.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to photophobia, phonophobia, COPD, PTSD, an aggravation of bipolar disorder, panic disorder, chronic pain syndrome, depression, anxiety, dizziness or headaches is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the claimant reached MMI on October 12, 2012, is supported by sufficient evidence and is affirmed.

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 6% as certified by Dr. T. Dr. T examined the claimant on January 2, 2013, and assessed the claimant with a chemical burn of the eyes, left eye corneal scarring, and left eye decreased visual acuity (20/70 compared to 20/30 pre-injury). He further notes that the claimant's IR was done in keeping with 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).

In Chapter 8, The Visual System, on page 8/209, the AMA Guides provide:

Visual impairment occurs in the presence of a deviation from normal in one or more of the functions of the eye, which include: (1) corrected visual acuity for near and far objects; (2) visual field perception; and (3) ocular motility with diplopia. Evaluation of visual impairment is based on evaluation of the three functions.

On page 8/217, in Section 8.4, Steps in Determining Impairment of the Visual System and of the Whole Person, the AMA Guides state:

Step 1: Determine and record the percentage loss of central vision for each eye separately, combining the losses of near and distance vision.

Step 2: Determine and record the percentage loss of visual field for each eye separately (monocular) or for both eyes together (binocular).

Step 3: Determine and record the percentage loss of ocular motility.

Section 8.1 Central Visual Acuity, Determining the Loss of Central Vision in One Eye, on page 8/211 explains Step 1:

First, measure and record the best central visual acuity for distance and the best acuity for near vision, with and without conventional corrective spectacles or contact lenses. [Table 2, page 8/211]

Then consult Table 3 [page 8/212] to derive the overall loss, combining the values for best corrected near and distance acuities. Allow, if indicated, for the additional loss of central vision that results from monocular aphakia or pseudophakia.

However, in determining the percentage loss of central vision, Dr. T states in his narrative report dated January 2, 2013, that only distant visual acuity measurements are available in this case. For the near visual acuity measurement, Dr. T assumes a similar decrease as the distant visual acuity measurement, but he does not perform actual measurements on the claimant. He states in his narrative report that he feels “it is reasonable to assume a similar visual decrease for the left eye in terms of near vision. Given the fact that the patient has multiple documentations of 20/70 distant vision, a Snellen 14/24, 14/28 rating for near vision would be expected in this patient.” Dr. T uses the measurement of 20/70 as documented in the claimant’s medical records for the distant vision measurement, and he then approximates a near vision measurement of 14/28. He then assigns a 23% for central vision loss of the left eye in accordance with Table 3, page 8/212 of the AMA Guides. He further assigns the right eye a 0% for central vision loss because it is correctable to 20/20. He then uses Table 7 on page 8/219 and Table 6 on page 8/218 to convert the central vision loss to a 6% whole person impairment. As Dr. T failed to properly apply the AMA Guides in assessing the claimant’s IR by failing to provide a measurement for near visual acuity, we reverse the hearing officer’s determination that the claimant’s IR is 6%. We further note that Dr. T stated in his report that there are no claimed deficits of either monocular or binocular visual fields or claimed abnormalities of ocular motility or binocular diplopia, but again failed to provide any measurements as required by the AMA Guides and Rule 130.1(c)(3) in rating an impairment of the visual system.

There is one other certification in evidence. (Dr. Th), the treating doctor, examined the claimant on August 27, 2012, and certified that the claimant reached MMI on August 27, 2012, with no permanent impairment. As we have affirmed the hearing officer's determination that the claimant reached MMI on October 12, 2012, Dr. Th's certification cannot be adopted.

Since there is no IR certification that can be adopted, we remand the issue of 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 photophobia, phonophobia, COPD, PTSD, an aggravation of bipolar disorder, panic disorder, chronic pain syndrome, depression, anxiety, dizziness or headaches.

We affirm the hearing officer's determination that the claimant reached MMI on October 12, 2012.

We reverse the hearing officer's determination that the claimant's IR is 6%, and remand the issue of IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. T is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. T is still qualified and available to be the designated doctor. If Dr. T 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 compensable injury of [Date of Injury].

The designated doctor is to be requested to re-examine the claimant and to give a certification of IR for the claimant's compensable injury of [Date of Injury], based on the claimant's condition as of the October 12, 2012, MMI date using the AMA Guides and considering the claimant's medical record and the certifying examination.

The hearing officer is to advise the designated doctor that the compensable injury is a bilateral eye chemical burn, as stipulated by the parties, and that the steps for determining the impairment of the visual system in Chapter 8 of the AMA Guides must be followed, including providing all measurements that are required in accordance with Rule 130.1(c)(3).

After the designated doctor re-examines the claimant and submits a new certification of IR, the parties are to be provided with the designated doctor's Report of Medical Evaluation (DWC-69) and narrative report. The parties are to be allowed an opportunity to respond. The hearing officer is then to make a determination on IR that is supported by the evidence and 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** 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 78701-3218.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge