APPEAL NO. 142662
FILED FEBRUARY 9, 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 November 24, 2014, in San Antonio, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury extends to chondromalacia of the right knee; (2) the compensable injury does not extend to right knee prepatellar bursitis, osteoarthrosis, lateral and medial meniscus tear, patellar tendinitis, and internal derangement; (3) the appellant/cross-respondent (claimant) has not reached maximum medical improvement (MMI); (4) because the claimant has not reached MMI, no impairment rating (IR) may be assigned at this time; and (5) the claimant had disability from December 19, 2013, through the date of the CCH as a result of the compensable injury of [Date of Injury].

The claimant appealed the hearing officer's determination that the compensable injury does not extend to right knee prepatellar bursitis, osteoarthrosis, lateral and medial meniscus tear, patellar tendinitis, and internal derangement. The claimant argued that evidence was sufficient to establish that these disputed conditions were part of the compensable injury. Respondent 1/cross-appellant (self-insured) responded, urging affirmance of the disputed extent-of-injury conditions appealed by the claimant. The appeal file does not contain a response from Respondent 2 (subclaimant) to the claimant's appeal.

The self-insured appealed the determinations that the compensable injury extends to chondromalacia; the claimant has not reached MMI; because the claimant has not reached MMI, no IR can be assigned; and the claimant had disability from December 19, 2013, through the date of the CCH. The self-insured argued that there was not sufficient evidence to support the hearing officer's determination that the compensable injury extended to chondromalacia. The self-insured additionally argued that the opinion of the doctor the hearing officer relied upon to determine that the claimant was not at MMI considered conditions that were not part of the compensable injury. Further, the self-insured argued that the claimant did not have disability for the time period in dispute because she had been released to return to work full duty based upon a right knee sprain/strain. The claimant responded to the self-insured's appeal urging affirmance for the issues on which it prevailed. The appeal file does not contain a response to the self-insured's appeal from the subclaimant.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury, in the form of a right knee sprain/strain, on [Date of Injury], and that (Dr. B) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor for the issues of MMI, IR, disability, return to work, and extent of the compensable injury. The claimant testified that she was cleaning the floor and she felt a pop in her right knee when she knelt down.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date of Injury], extends to chondromalacia of the right knee is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to right knee prepatellar bursitis, osteoarthrosis, lateral and medial meniscus tear, patellar tendinitis, and internal derangement is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant had disability from December 19, 2013, through the date of the CCH as a result of the compensable injury of [Date of Injury], is supported by sufficient evidence and is affirmed.

MMI/IR

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.

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 found that the determination of the designated doctor, Dr. B that the claimant reached MMI on June 28, 2013, with a zero percent IR is contrary to the preponderance of the evidence. We agree. Dr. B examined the claimant on August 6, 2013. Dr. B gave as his assessment for the claimant's condition: a sprained right knee and prepatellar bursitis of the right knee. Dr. B noted that the claimant has "essentially normal range of motion [ROM]." Dr. B noted that according to the Official Disability Guidelines-Treatment in Workers' Compensation published by Work Loss Data Institute the claimant's treatment for the sprained knee should resolve by June 28, 2013. Dr. B subsequently re-examined the claimant on October 20, 2014, for the purpose of giving an opinion on the extent of the compensable injury. Dr. B noted that the claimant's examination findings had changed considerably and that the claimant had significant compromise in the ROM of the right knee compared to the previous examination. Dr. B did not consider and rate the condition of chondromalacia which was determined to be part of the compensable injury. Accordingly, the certification from Dr. B that the claimant reached MMI on June 28, 2013, with a zero percent IR cannot be adopted.

(Dr. O), a carrier-selected required medical examination doctor, examined the claimant on October 16, 2014, and certified that the claimant reached MMI on June 28, 2013, with a zero percent IR. However, Dr. O considered only a right knee sprain/strain. Dr. O did not consider the entire compensable injury. Accordingly, his certification cannot be adopted.

The hearing officer determined that the claimant has not reached MMI and because the claimant has not reached MMI, an IR would be premature per the certification of (Dr. T), a doctor acting in place of the treating doctor. Dr. T examined the claimant on November 6, 2013. Dr. T stated that the claimant has a "surgical knee." Dr. T further noted that he had every expectation that the claimant will become a candidate for a diagnostic/therapeutic arthroscopy with surgical repair of what is almost certainly a lateral meniscal derangement. Dr. T based his certification that the claimant was not at MMI on the meniscal tears and internal derangement, which have been determined not to be part of the compensable injury. Accordingly, the hearing officer's determinations that the claimant is not at MMI and that no IR can be assigned at this time are reversed.

No other certifications of MMI/IR are in evidence. The issues of MMI and IR are remanded to the hearing officer for further action in accordance with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], extends to chondromalacia of the right knee.

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to right knee prepatellar bursitis, osteoarthrosis, lateral and medial meniscus tear, patellar tendinitis, and internal derangement.

We affirm the hearing officer's determination that the claimant had disability from December 19, 2013, through the date of the CCH as a result of the compensable injury of [Date of Injury].

We reverse the hearing officer's determination that the claimant has not reached MMI and remand the MMI issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that because the claimant has not reached MMI, no IR may be assigned at this time and remand the IR issue 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, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the [Date of Injury], compensable injury.

The hearing officer is to notify the designated doctor that the compensable injury of [Date of Injury], extends to chondromalacia as administratively determined, as well as a right knee sprain/strain as stipulated to by the parties. The hearing officer is to further advise the designated doctor that the compensable injury of [Date of Injury], does not extend to right knee prepatellar bursitis, osteoarthrosis, lateral and medial meniscus tear, patellar tendinitis, and internal derangement as administratively determined.

The hearing officer is to request the designated doctor to give an opinion on the claimant's MMI and to rate the entire compensable injury in accordance 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) considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on MMI and IR 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 **LYTLE INDEPENDENT SCHOOL DISTRICT**, a governmental entity that self-insures, either individually or collectively through the **TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

DUBRAVKA ROMANO
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Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space Beam
Appeals Judge