APPEAL NO. 142702
FILED MARCH 09 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 June 5, 2014, with the record closing on November 14, 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], extends to memory loss, fractures and injuries to the teeth numbers 6 and 8, an injury to the cervical spine, post-traumatic stress disorder (PTSD) and major depressive disorder; (2) the compensable injury of [Date of Injury], does not extend to somatic symptom disorder, fractures and injuries to the teeth numbers 5, 12, 22, 27, 29, a right medial meniscus tear and hypertension; (3) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on December 7, 2012; (4) the claimant's impairment rating (IR) is zero percent; and (5) the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning December 8, 2012, and continuing through [Date of Injury].

The claimant appealed, disputing that portion of the hearing officer's determination regarding extent of injury that was not favorable to the claimant, as well as the MMI and IR determinations. Also, the claimant stated that he disagrees with "[Conclusion of Law No. 6] as it is illegible and I [cannot] determine what it is stating as a conclusion of law, it is blank. [The] [c]laimant would move to know what it says so that he can know whether or not he agrees with it." The respondent/cross-appellant (self-insured) responded to the claimant's appeal, urging affirmance of the hearing officer's determinations. The self-insured cross-appealed that portion of the hearing officer's extent-of-injury determination that the claimant's compensable injury of [Date of Injury], extends to memory loss, fractures and injuries to the teeth numbers 6 and 8, an injury to the cervical spine, PTSD and major depressive disorder. The claimant did not respond to the self-insured's cross-appeal. The hearing officer's disability determination was not appealed and has become final pursuant to Section 410.169. However, we note that the hearing officer's decision contains a clerical error on the disability determination.

DECISION

Affirmed in part, reformed in part, and reversed and rendered in part.

The parties stipulated that on [Date of Injury], the claimant sustained a compensable injury at least in the form of a concussion, lip laceration, scalp contusion, lumbar strain, and bilateral knee contusions, and the date of statutory MMI is April 15, 2014. The claimant testified that he was employed as a corrections officer and he was attacked and beaten by an inmate.

In this case, the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. S) as the designated doctor on the issues of extent of injury, MMI and IR. At the close of the CCH, the self-insured requested that a letter of clarification (LOC) be sent to Dr. S to request a causation analysis on the extent-of-injury disputed conditions. In response, to the LOC, Dr. S requested to re-examine the claimant. However, the claimant relocated to Houston, Texas, and Dr. S did not perform designated doctor examinations in Houston, Texas. The Division appointed a second designated doctor, (Dr. P) on the issues of extent of injury, MMI, and IR. Dr. P examined the claimant on October 3, 2014, and certified that the claimant reached MMI on December 17, 2012, with a zero percent IR. After the parties were given the opportunity to respond to Dr. P's certification of MMI and IR, the record closed on November 14, 2014.

DISABILITY

As previously mentioned the hearing officer's disability determination was not appealed and has become final pursuant to Section 410.169. The hearing officer determined that the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning December 8, 2012, and continuing through [Date of Injury]. However, we note that the hearing officer's decision on the last page states that the claimant did not have disability resulting from the compensable injury of [Date of Injury], during the period beginning December 8, 2012, and continuing through [Date of Injury]. The hearing officer's decision on the last page is internally inconsistent with the hearing officer's "[d]ecision and [o]rder" on the first page, Finding of Fact No. 8, and Conclusion of Law No. 7 in which the hearing officer found in favor of the claimant on disability. Accordingly, we reform the hearing officer's Decision on the last page to state that the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning December 8, 2012, and continuing through [Date of Injury], to conform to the evidence, Finding of Fact No. 8, and Conclusion of Law No. 7.

CONCLUSION OF LAW NO. 6

The claimant appeals the hearing officer's Conclusion of Law No. 6 because the decision and order he received reflected that conclusion of law was not legible as it was blank. Review of Division records reflects that the hearing officer's Conclusion of Law No. 6 states that the "[c]laimant's IR is [zero percent]." Given that the claimant has appealed the hearing officer's IR on its merits, and the hearing officer's decision and Finding of Fact No. 6 state that the claimant's IR is zero percent, we find that the claimant's copy of the hearing officer's decision and order regarding Conclusion of Law No. 6 is illegible and is a harmless error in light of the supportable determinations by the hearing officer that the claimant's IR is zero percent.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date of Injury], extends to memory loss, fractures and injuries to the teeth numbers 6 and 8, an injury to the cervical spine, PTSD and major depressive disorder, but does not extend to somatic symptom disorder, fractures and injuries to the teeth numbers 5, 12, 22, 27, 29, a right medial meniscus tear and hypertension is supported by sufficient evidence and is affirmed.

MMI

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.

The hearing officer found that Dr. P was appointed to succeed Dr. S as the designated doctor on the issues of extent of injury, MMI and IR, and that the preponderance of the evidence was not contrary to Dr. P's certification of MMI and IR. Both of these findings are supported by sufficient evidence. However, the evidence reflects that Dr. P certified that the claimant reached MMI on December 17, 2012, not December 7, 2012. Dr. P noted in her narrative report dated October 22, 2014, that the claimant's psychologist stated that the claimant had met his goals and discharged him on December 17, 2012. The Report of Medical Evaluation (DWC-69) lists the date of MMI as December 17, 2012. We note that there is no DWC-69 in evidence from Dr. P with a date of MMI of December 7, 2012. The hearing officer is clear in her decision that she found Dr. P's certification of MMI was supported by a preponderance of the evidence, and mistakenly determined that the claimant reached MMI on December 7, 2012, rather than on December 17, 2012, which is the MMI date Dr. P actually certified.

Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on December 7, 2012, as being unsupported by the evidence, and we render a new decision that the claimant reached MMI on December 17, 2012.

IR

The hearing officer's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

SUMMARY

We reform the hearing officer's decision on the last page to state that the claimant had disability resulting from the compensable injury of [Date of Injury], during the period beginning December 8, 2012, and continuing through [Date of Injury].

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], extends to memory loss, fractures and injuries to the teeth numbers 6 and 8,

an injury to the cervical spine, PTSD and major depressive disorder, but does not extend to somatic symptom disorder, fractures and injuries to the teeth numbers 5, 12, 22, 27, 29, a right medial meniscus tear and hypertension.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

We reverse the hearing officer's determination that the claimant reached MMI on December 7, 2012, as being unsupported by the evidence, and we render a new decision that the claimant reached MMI on December 17, 2012.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

JONATHAN D. BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

JONATHAN D. BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge