APPEAL NO. 150201
FILED MARCH 25, 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 December 15, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on November 1, 2013; and that the claimant's impairment rating (IR) is 8%. The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The claimant contends that the evidence presented at the CCH was not sufficient to overcome the presumptive weight of the designated doctor's certification that the claimant reached MMI on November 1, 2013, with a 17% IR. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The parties stipulated that on [Date of Injury], the claimant sustained a compensable injury initially in the form of a bilateral metacarpal fracture of the hands. We note that the hearing officer left out a description of the nature of the compensable injury in the stipulation contained in the decision and order, although a review of the record reflects that the parties agreed to the specific nature of the compensable injury. We reform the stipulation to reflect the agreement of the parties on the record. The parties additionally stipulated that the claimant reached MMI on November 1, 2013. We note that although the claimant's appeal specifically lists Conclusion of Law No. 3 which states the claimant reached MMI on November 1, 2013, the only argument made in the claimant's appeal pertains to the determination of the claimant's IR. All of the certifications of MMI and IR in evidence certify that the claimant reached MMI on November 1, 2013.

The claimant testified he injured both his hands when replacing a part on equipment that was being used to drill. The claimant's right ring finger (fourth digit) was amputated and he sustained fractures of his right pinky finger (fifth digit) as well as the left ring and pinky fingers.

MMI

The hearing officer's determination that the claimant reached MMI on November 1, 2013, 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 Texas Department of Insurance, Division of Workers' Compensation (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.

(Dr. K) was appointed by the Division as designated doctor for the purpose of MMI and IR. Dr. K examined the claimant on December 30, 2013, and certified that the claimant reached MMI on November 1, 2013, with a 17% 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. K noted that the fractures of the fourth and fifth digits of the left hand had healed completely; the claimant had full function of the left hand without pain or restrictions of motion; and assigned 0% impairment for the left hand. Dr. K noted that the amputation of the claimant's ring finger on his right hand at the metacarpal level amounted to 100% of the finger, assigning 1% whole person impairment and noted that the sensory loss for that amputation was 5% transverse. Dr. K then assessed 6% whole person impairment for the total loss of the fourth digit. In his narrative report, Dr. K noted that for the fifth digit of the right hand, the claimant had partial sensory loss and restriction of motion as well as weakness of the grip. Dr. K determined for the fifth digit, the claimant had partial sensory loss which was 2% whole person impairment; loss of range of motion (ROM) which he calculated to be 3% whole person impairment; and 6% whole person impairment due to weakness of the grip with some restriction of the PIP and DIP joints. Dr. K then added the amounts he calculated

for whole person impairment for loss of sensation, loss of ROM, and loss of grip strength to determine the claimant's total whole person IR is 17%.

The AMA Guides provide on page 3/35 that if two or more digits of the hand are involved, evaluate them separately and calculate the impairment for each digit in the following manner: using Table 1 (page 18) find the hand impairment contributed by each digit; add the hand impairments contributed by each digit to obtain the total hand impairment; and using Tables 2 and 3 (pp. 19 and 20) the hand impairment is converted to impairment of the upper extremity and then the whole person. The hearing officer found that the IR assessed by Dr. K was not performed in accordance with the AMA Guides and is contrary to the preponderance of the evidence. That finding is supported by sufficient evidence.

The hearing officer found that the November 1, 2013, date of MMI and 8% IR certified by (Dr. B) are supported by a preponderance of the evidence. Dr. B, a carrier selected post-designated doctor required medical examination (RME) doctor, examined the claimant on June 24, 2014, and certified that the claimant reached MMI on November 1, 2013, with an 8% IR. It was undisputed that although Dr. B at one time had been certified by the Division to assign IRs, at the time of his examination of the claimant, his certification had lapsed.

Rule 130.1(a)(1)(B) provides, in part, that on or after September 1, 2003, a doctor serving as an authorized doctor to certify MMI and IR in accordance with Rule 130.1 is authorized as follows: (i) a doctor whom the Division has certified to assign IRs or otherwise given specific permission by exception to, is authorized to determine whether an injured employee has permanent impairment, assign an IR, and certify MMI; and (ii) a doctor whom the Division has not certified to assign IRs or otherwise given specific permission by exception to is only authorized to determine whether an injured employee has permanent impairment and, in the event that the injured employee has no impairment, certify MMI. Rule 130.1(a)(1) provides only an authorized doctor may certify MMI, determine whether there is permanent impairment, and assign an IR if there is permanent impairment. Because the Division's certification of Dr. B had lapsed, he was no longer an authorized doctor to certify MMI and assign an IR. Accordingly, the certification from Dr. B was not adoptable.

There was only one other certification in evidence. (Dr. Ba) was the second post-designated doctor RME because Dr. B was no longer authorized. Dr. Ba examined the claimant on November 24, 2014, and certified that the claimant reached MMI on November 1, 2013, with an 8% IR. Dr. Ba noted that the claimant had full ROM in his left hand, wrist, and fingers. Dr. Ba listed ROM measurements for the claimant's

right fifth digit[1] and assessed 6% hand impairment for the claimant's right fifth finger and 10% hand impairment for the claimant's amputated right fourth digit. Dr. Ba then added hand impairments assessed for the claimant's fourth and fifth digits of his right hand[2] and converted the total hand impairment to upper extremity impairment and converted the upper extremity impairment to whole person, and assessed an 8% whole person IR.

[1] We note that Dr. Ba later in his report mistakenly refers to these measurements as being from the claimant's right fourth digit.

[2] We note that Dr. Ba mistakenly reports 4% impairment rather than 2% impairment for 10° of extension for the DIP joint which causes the total impairment for the digit to be 53% which converts to 5% hand impairment rather than 6% hand impairment. However, the total whole person impairment after conversion still results in the 8% assessed by Dr. Ba.

Because an MMI date of November 1, 2013, and an IR of 8% are supported by the evidence, based on the report of Dr. Ba rather than the report of Dr. B, the hearing officer's determination that the claimant reached MMI on November 1, 2013, with an 8% IR is affirmed but reformed to reflect that the claimant reached MMI on November 1, 2013, with an 8% IR per the report of Dr. Ba.

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.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge