

APPEAL NO. 150503
MAY 5, 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 8, 2014, and [Date of Injury], in Dallas, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of February 16, 2013, does not extend to a cervical disc protrusion at C5-6 and bilateral shoulders sprain/strains; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 6, 2013; and (3) the claimant's impairment rating (IR) is 11%.

The claimant appealed all of the hearing officer's determinations, contending that the evidence does not support the hearing officer's determinations. The claimant also appealed the hearing officer's findings of fact that the claimant's request for a continuance of the [Date of Injury], CCH was denied as no good cause for a continuance was shown, and that the claimant did not have good cause for failing to appear at the December 8, 2014, and [Date of Injury], CCHs. The claimant alleges that the hearing officer should have granted her request for a continuance of the [Date of Injury], CCH because she had good cause. We note that the claimant did not state in her appeal why she failed to attend either CCH or why she had good cause for her failure to appear. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The carrier stipulated that the claimant sustained a compensable injury on February 16, 2013, and that the claimant's date of statutory MMI is February 21, 2015. Medical records in evidence indicate that the claimant was injured when she slipped and fell.

REQUEST FOR CONTINUANCE OF [DATE OF INJURY], CCH

The hearing officer's finding that the claimant's request for a continuance of the [Date of Injury], CCH was denied as no good cause for a continuance was shown is supported by sufficient evidence and is affirmed.

**NO GOOD CAUSE FOR FAILING TO APPEAR AT THE DECEMBER 8, 2014, AND
[DATE OF INJURY], CCHs**

The hearing officer's finding that the claimant did not have good cause for failing to appear at the December 8, 2014, and [Date of Injury], CCHs is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of February 16, 2013, does not extend to a cervical disc protrusion at C5-6 and bilateral shoulders sprain/strains 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 Texas Department of Insurance, Division of Workers' Compensation (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.

The hearing officer determined that the claimant reached MMI on November 6, 2013, with an 11% IR as certified by (Dr. L), the designated doctor appointed by the Division to determine MMI and IR.

Dr. L examined the claimant on December 13, 2013, and certified that the claimant reached MMI on November 6, 2013, with an 11% 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). In an attached narrative report Dr. L noted diagnoses of a cervical strain, lumbar strain, left shoulder contusion, bilateral shoulder sprain, chronic myofascial pain syndrome, and lumbar intervertebral disc disorder. Dr. L placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints or Symptoms for 0% impairment for the claimant's cervical spine, and in DRE Lumbosacral Category II: Minor Impairment for 5% impairment for the claimant's lumbar spine. Dr. L also assessed 3% whole person impairment (WPI) for the claimant's left shoulder based on range of motion (ROM) measurements taken of the

claimant's left shoulder, and 3% WPI for the claimant's right shoulder based on ROM measurements taken of the right shoulder.

As noted above, we have affirmed the hearing officer's determination that the compensable injury of February 16, 2013, does not extend to a cervical disc protrusion at C5-6 and bilateral shoulders sprain/strains. Dr. L considered and rated bilateral shoulder sprain/strains, a condition which has been determined to not be part of the compensable injury. Accordingly, we reverse the hearing officer's determinations that the claimant reached MMI on November 6, 2013, with an 11% IR.

There is one other MMI/IR certification in evidence, which is from (Dr. F), a doctor selected by the treating doctor to act in place of the treating doctor. Dr. F examined the claimant on April 4, 2014, and certified that the claimant reached MMI on April 4, 2014, with a 0% IR. Dr. F noted diagnoses of low back pain, neck pain, and shoulder pain. Dr. F placed the claimant in DRE Cervicothoracic Category I: Complaints or Symptoms for 0% impairment for the claimant's cervical spine. However, although Dr. F diagnosed low back pain and mentioned a lumbar sprain in his narrative report, Dr. F did not provide a specific impairment for the claimant's lumbar spine. Dr. L's MMI/IR certification cannot be adopted.

As there is no MMI/IR certification in evidence that can be adopted, we remand the issues of MMI and 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 February 16, 2013, does not extend to a cervical disc protrusion at C5-6 and bilateral shoulders sprain/strains.

We reverse the hearing officer's determinations that the claimant reached MMI on November 6, 2013, with an IR of 11%, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. L is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. L is still qualified and available to be the designated doctor. If Dr. L 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 MMI and IR for the February 16, 2013, compensable injury.

The hearing officer is to advise the designated doctor that the February 16, 2013, compensable injury does not extend to a cervical disc protrusion at C5-6 and bilateral shoulders sprain/strains as administratively determined. The hearing officer is also to advise the designated doctor that the statutory date of MMI in this case is February 21, 2015. The hearing officer is to request the designated doctor to give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination. The date of MMI cannot be after the statutory date of MMI, which is February 21, 2015.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge