

APPEAL NO. 150543
FILED MAY 4, 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 May 13, 2014, with the record closing on February 9, 2015, in Lufkin, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant's (claimant) compensable injury of [date of injury],¹ does not include right ankle chronic pain, arthritic and post-traumatic degenerative changes right ankle, degenerative changes of the right distal tibia, joint effusion in the right ankle, tenosynovitis of the right ankle, chondromalacia of the talar² cortex of the right knee, aggravation of osteoarthritis of the right wrist, and chronic pain in the right wrist; (2) (Dr. C) and (Dr. R) were appointed as designated doctors in accordance with Section 408.0041 and 28 TEX. ADMIN. CODE § 127.140 (Rule 127.140); (3) the claimant reached maximum medical improvement (MMI) on October 5, 2010;³ (4) the claimant's impairment rating (IR) is 4%; (5) the first certification of MMI and assigned IR did not become final under Section 408.123 and Rule 130.12; and (6) the claimant did not have disability as a result of the [date of injury], compensable injury from February 1 through October 5, 2010.

The claimant appealed the hearing officer's determinations regarding extent of injury, appointment of designated doctors, disability, and IR based on sufficiency of evidence. Further, the claimant appeals the hearing officer's finding that Dr. R was appointed as a designated doctor in accordance with Section 408.0041⁴ and Rule 127.140, because the actual issue litigated at the CCH was whether Dr. R had a disqualifying association under Rule 127.140. Also, the claimant asserts that the certification of IR adopted by the hearing officer is based on the date of the examination, rather than the date of MMI. The claimant requests that the hearing officer's determination that the claimant's IR is 4% be reversed, and that the referral doctor's assigned 14% IR be adopted. The claimant asserts that the extent-of-injury conditions of right ankle chronic pain and chronic right wrist pain are not conditions that are outside

¹ We note that the hearing officer's decision contains conflicting dates of injury of September 28, 2008, and [date of injury], throughout his decision. The benefit review conference (BRC) report lists the date of injury as [date of injury].

² The BRC report and the extent-of-injury issue list chondromalacia of the "tolar" cortex of the right knee; however, the medical evidence references chondromalacia of the "talar" cortex of the right knee.

³ October 5, 2010, is the statutory date of MMI.

⁴ We note Finding of Fact No. 4 incorrectly references Section 408.004 (Required Medical Examinations; Administrative Violation), rather than Section 408.0041 (Designated Doctor Examination).

the common knowledge and experience of the fact finder that require expert medical evidence.

The respondent (carrier) responded, urging affirmance of the disputed determinations. Specifically, the carrier states that the hearing officer's decision and order should be affirmed because he relied upon expert medical evidence and the designated doctor's opinion to determine the extent-of-injury, disability, and IR issues. Further, the carrier asserts that the hearing officer's determination regarding the appointment of designated doctors is of no impact on the appealed issues, since the hearing officer did not rely on Dr. C's or Dr. R's medical reports to determine extent of injury, IR, or disability.

The hearing officer's determinations that the first certification of MMI and assigned IR did not become final under Section 408.123 and Rule 130.12, and that the claimant reached MMI on October 5, 2010, were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded for reconstruction of the record.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. The appeal file in this case contains one compact disc and it is completely blank. The file indicates that there was no court reporter and the file does not contain a transcript or tape recording of the CCH proceeding. Consequently, we reverse and remand this case to the hearing officer who presided over the May 13, 2014, CCH, if possible, for reconstruction of the CCH record. See Appeals Panel Decision (APD) 060353, decided April 12, 2006. No new evidence should be admitted on remand. See APD 031163, decided June 17, 2003, and APD 041970, decided October 4, 2004.

On remand, the hearing officer is to determine whether the correct date of injury is September 28, 2008, or [date of injury], and whether the extent-of-injury condition in dispute is chondromalacia of the talar cortex of the right knee or chondromalacia of the talar cortex of the right knee. The hearing officer is to correctly reference Section 408.0041, rather than Section 408.004 in his decision.

As previously mentioned, the hearing officer is to make a determination on the extent of injury, appointment of designated doctors, disability, and IR issues. As previously mentioned, the hearing officer's determinations that the first certification of MMI and assigned IR did not become final under Section 408.123 and Rule 130.12, and

that the claimant reached MMI on October 5, 2010, were not appealed and have become final pursuant to Section 410.169.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **CHARTIS PROPERTY AND CASUALTY N/K/A AIG PROPERTY CASUALTY 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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge