

APPEAL NO. 150558  
FILED MAY 08, 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 9, 2014, with the record closing on February 4, 2015, in Fort Worth, 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 a cervical sprain/strain, a low back sprain/strain, and post-traumatic vertigo; (2) the compensable injury of (date of injury), does not extend to a closed head injury or traumatic brain injury (other than a concussion), post-concussion headaches, pain disorder associated with psychological factors and a general medical condition, adjustment disorder with anxiety and depressed mood, chronic pain disorder, and cognitive impairment; (3) the appellant (claimant) reached maximum medical improvement (MMI) on October 2, 2013; and (4) the claimant's impairment rating (IR) is five percent.

The claimant appealed that portion of the hearing officer's determination on the extent of the compensable injury that was adverse to him, as well as the hearing officer's MMI and IR determinations. The claimant contended the evidence established that the appealed extent-of-injury conditions were caused by the compensable injury, and that the hearing officer's MMI and IR determinations do not consider and rate the entire compensable injury. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations. That portion of the hearing officer's determination that the compensable injury of (date of injury), extends to a cervical sprain/strain, a low back sprain/strain, and post-traumatic vertigo was not appealed and has become final pursuant to Section 410.169.

### DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the compensable injury of (date of injury), includes at least burns to the face, eyes, and neck as well as a post-concussion syndrome, and that the date of statutory MMI is March 30, 2014. The claimant testified he was injured while welding a pipe, and that when he lit his torch the pipe exploded and threw him backwards five feet, causing him to injure his head.

### EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to a closed head injury or traumatic brain injury (other than a concussion), pain disorder associated with psychological factors and a general medical condition, adjustment disorder with anxiety and depressed mood, chronic pain disorder, and cognitive impairment is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury of (date of injury), does not extend to post-concussion headaches. The hearing officer explained in the discussion portion of the decision that the claimant failed to produce sufficient expert medical evidence to establish compensability of post-concussion headaches.

In this case the claimant was injured in an explosion that threw him back approximately five feet, which resulted in an injury to his head. The parties stipulated in part that the compensable injury includes at least a post-concussion syndrome. Under the facts of this case and with the described mechanism of injury, we decline to hold that expert medical evidence was required to prove post-concussion headaches. However, we note that there was conflicting evidence in the record regarding post-concussion headaches, and we do not consider it appropriate to render a decision as to whether the compensable injury extends to post-concussion headaches. Therefore, we remand the issue of whether the compensable injury of (date of injury), extends to post-concussion headaches to the hearing officer for further action consistent with this decision.

### **MMI/IR**

The hearing officer determined that the claimant reached MMI on October 2, 2013, with a five percent IR as certified by (Dr. P), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division).

Given that we have reversed and remanded a portion of the extent-of-injury determination to the hearing officer, we also reverse the hearing officer's determination that the claimant reached MMI on October 2, 2013, with a five percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision. We note that Dr. P's MMI/IR certification contains errors, as explained below.

Dr. P examined the claimant on September 3, 2014, and certified that the claimant reached MMI on October 2, 2013, with a five percent 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. P noted compensable diagnoses of post-

concussive syndrome, post-traumatic vertigo, cervical sprain/strain, lumbar sprain/strain, and first degree burns to the face and eyelids.

Dr. P placed the claimant in Diagnosis-Related Estimate (DRE) “Cervico-lumbar” Category I: Complaints or Symptoms for zero percent impairment of the claimant’s “cervico-lumbar spine.” We note that page 3/95 of the AMA Guides states that for purposes of the AMA Guides, the cervical region may be considered to represent the Cervicothoracic region, the thoracic region to represent the Thoracolumbar region, and the lumbar region to represent the Lumbosacral region. See Appeals Panel Decision (APD) 051306-s, decided August 3, 2005.

Dr. P also placed the claimant in DRE Lumbosacral Category I: Complaints or Symptoms for zero percent impairment of the claimant’s lumbar spine, and assessed zero percent whole person impairment (WPI) for first degree burns of the claimant’s face. We note that Dr. P did not discuss or consider burns to the claimant’s neck, a condition which was stipulated by the parties as part of the compensable injury. Dr. P additionally assessed five percent WPI for post-concussion syndrome under Chapter 4, page 142 of the AMA Guides. Dr. P stated in his narrative report dated September 12, 2014, that the post-traumatic vertigo is compensable because “the loss of balance and the Neuropsych Evaluation that I ordered for the [claimant] showed some impairment in executing functioning and verbal reasoning problems (minimal) which is from Chapter 4, page [142] Table 2 [of the AMA Guides].”

Dr. P did not consider or rate a neck burn, a condition which has been stipulated by the parties as being part of the compensable injury. Dr. P failed to consider and rate the entire compensable injury.

There are other MMI/IR certifications in evidence, which are from (Dr. S), a previously-appointed designated doctor; (Dr. K), the claimant’s treating doctor; and (Dr. Sh), a referral doctor acting in place of the treating doctor. However, all of these certifications contain errors that would prevent their adoption regardless of however the hearing officer determines compensability of post-concussion headaches.

Dr. S failed to consider and rate burns to the face, eyes, and neck, which the parties have stipulated is part of the compensable injury. Dr. K failed to consider and rate post-concussion syndrome, which the parties have stipulated is part of the compensable injury, as well as post-traumatic vertigo and cervical and lumbar sprains/strains, all of which have been determined to be part of the compensable injury. Dr. Sh certified on July 8, 2013, that the claimant had not reached MMI. Dr. Sh noted a diagnosis of “post traumatic cephalgia,” among others, in his July 8, 2013, narrative report. The parties did not stipulate that post traumatic cephalgia is part of the compensable injury, nor was the compensability of that condition actually litigated by the

parties at the CCH. Dr. Sh considered a condition that has not at this time been determined to be part of the compensable injury. In another MMI/IR certification Dr. Sh failed to consider or rate a neck burn. Also in evidence is a report from Dr. Sh dated November 18, 2014, discussing MMI and IR; however, there is no Report of Medical Evaluation (DWC-69) in evidence from Dr. Sh correlating to that report.

### **SUMMARY**

We affirm that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to a closed head injury or traumatic brain injury (other than a concussion), pain disorder associated with psychological factors and a general medical condition, adjustment disorder with anxiety and depressed mood, chronic pain disorder, and cognitive impairment.

We reverse that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to post-concussion headaches, and we remand the issue of whether the compensable injury of (date of injury), extends to post-concussion headaches to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on October 2, 2013, with a five percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. P is the designated doctor in this case. On remand, the hearing officer is to consider whether Dr. P is still qualified and available to be the designated doctor. If Dr. P is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 28 TEX. ADMIN. CODE § 127.5(c) (Rule 127.5(c)) to determine MMI and IR.

On remand, the hearing officer is to make a determination on whether the compensable injury of (date of injury), extends to post-traumatic headaches, using the correct legal standard. The hearing officer is to inform the designated doctor whether or not the compensable injury of (date of injury), extends to post-traumatic headaches depending upon his determination of the compensability of that condition. The hearing officer is also to inform the designated doctor that the (date of injury), compensable injury extends to burns to the face, eyes, and neck, post-concussion syndrome, a cervical sprain/strain, a low back sprain/strain, and post-traumatic vertigo. The hearing officer is then to inform the designated doctor that the (date of injury), compensable injury does not extend to a closed head injury or traumatic brain injury (other than a

concussion), pain disorder associated with psychological factors and a general medical condition, adjustment disorder with anxiety and depressed mood, chronic pain disorder, and cognitive impairment. The hearing officer is to request the designated doctor to give an opinion on the claimant's date of MMI, which cannot be later than March 30, 2014, the statutory date of MMI, and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is to make a determination on whether the compensable injury extends to post-traumatic headaches, 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **BITUMINOUS FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GLENN CAMERON**  
**222 WEST LAS COLINAS BLVD., SUITE 1720**  
**IRVING, TEXAS 75016-7968.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge