

APPEAL NO. 150589
FILED JUNE 02, 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 was held on February 27, 2015, in Houston, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury does not extend to cervical radiculopathy and disc herniations at C3-6; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on July 25, 2014; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed all of the hearing officer's determinations, essentially arguing that the hearing officer's determinations are not supported by the evidence. The respondent/cross-appellant (carrier) responded to the claimant's appeal, urging affirmance of the hearing officer's extent-of-injury determination. The carrier also filed a cross-appeal regarding the hearing officer's MMI and IR determinations. The carrier contended that the hearing officer's MMI and IR determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), at least in the form of a laceration to the left ear, cervical strain, and head contusion. The claimant testified he was injured when sheet rock and a dolly fell on him.

EXTENT OF INJURY

The hearing officer's determination that the (date of injury), compensable injury does not extend to cervical radiculopathy and disc herniations at C3-6 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 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.

The hearing officer determined that the claimant reached MMI on July 25, 2014, with a zero percent IR as certified on August 29, 2014, by (Dr. H), the designated doctor appointed by the Division to determine MMI and IR.

Dr. H initially examined the claimant on March 12, 2014, and in a Report of Medical Evaluation (DWC-69) dated April 1, 2014, certified that the claimant reached MMI on February 3, 2014, 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). Dr. H noted diagnoses of a laceration to the left ear and a cervical strain. Dr. H placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints or Symptoms for a zero percent impairment for the claimant's cervical spine.

Dr. H subsequently examined the claimant on August 13, 2014, and completed alternate DWC-69s dated August 29, 2014. In the first DWC-69, Dr. H again certified that the claimant reached MMI on February 3, 2014, with a zero percent IR. Dr. H explained in his attached narrative report that this MMI/IR certification considered and rated the accepted conditions of a laceration to the left ear, cervical strain, and head contusion. Dr. H placed the claimant in DRE Cervicothoracic Category I: Complaints or Symptoms for a zero percent impairment for the claimant's cervical spine. Dr. H also assessed zero percent impairment for the claimant's left ear laceration, and zero percent impairment for the claimant's head contusion.

In the alternate DWC-69 dated August 29, 2014, Dr. H certified that the claimant reached MMI on July 25, 2014, with a zero percent IR. Dr. H explained in his narrative report that this MMI/IR certification considered and rated the accepted conditions of a left ear laceration, cervical strain, and head contusion, as well as the disputed conditions of cervical radiculopathy and disc herniations at C3-6. Dr. H placed the claimant in DRE Cervicothoracic Category I: Complaints or Symptoms for a zero percent impairment for the claimant's cervical spine. Dr. H also assessed zero percent impairment for the claimant's left ear laceration, and zero percent impairment for the claimant's head contusion. We note that Dr. H in all three of his MMI/IR certifications assigned a zero percent IR.

The hearing officer adopted Dr. H's alternate August 29, 2014, DWC-69 and determined that the claimant reached MMI on July 25, 2014, with a zero percent IR. However, Dr. H's alternate DWC-69 considers and rates cervical radiculopathy and disc

herniations at C3-6. We have affirmed the hearing officer's determination that the compensable injury does not extend to cervical radiculopathy and disc herniations at C3-6. Dr. H's alternate MMI/IR certification considers and rates conditions that have been determined to not be part of the compensable injury. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on July 25, 2014.

We note that there is another MMI/IR certification in evidence, which is from (Dr. S), the claimant's treating doctor. Dr. S examined the claimant on May 15, 2014, and certified that the claimant reached MMI on January 2, 2015, with a five percent IR. However, Dr. S makes clear in his attached narrative report that he considered and rated cervical radiculopathy. Dr. S considered and rated a condition that has been determined to not be part of the compensable injury, and as such his MMI/IR certification cannot be adopted.

The remaining MMI/IR certifications are from Dr. H, the designated doctor, each of which has been discussed above. Dr. H's initial April 1, 2014, MMI/IR certification that the claimant reached MMI on February 3, 2014, with a zero percent IR considers and rates a cervical strain and a left ear laceration. Dr. H's initial MMI/IR certification does not consider and rate a head contusion, which is a condition the parties have stipulated is part of the compensable injury. Accordingly, Dr. H's initial MMI/IR certification cannot be adopted.

Dr. H's other August 29, 2014, MMI/IR certification that the claimant reached MMI on February 3, 2014, with a zero percent IR, considered and rated a laceration to the left ear, cervical strain, and head contusion. The parties have stipulated that the compensable injury is at least a laceration to the left ear, cervical strain, and head contusion, and we have affirmed the hearing officer's determination that the compensable injury does not extend to cervical radiculopathy and disc herniations at C3-6. This MMI/IR certification considers and rates the entire compensable injury. Accordingly, we render a new decision that the claimant reached MMI on February 3, 2014, as certified by Dr. H.

IR

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

SUMMARY

We affirm the hearing officer's determination that the (date of injury), compensable injury does not extend to cervical radiculopathy and disc herniations at C3-6.

We reverse the hearing officer's determination that the claimant reached MMI on July 25, 2014, and we render a new decision that the claimant reached MMI on February 3, 2014.

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

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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge