APPEAL NO. 150665
FILED MAY 21, 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 March 6, 2015, with the record closing on March 17, 2015, 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 (date of injury), does not extend to right shoulder sprain or strain, right shoulder internal derangement, right wrist derangement, cervical sprain or strain, or cervical disc protrusion; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 16, 2014; and (3) the claimant's impairment rating (IR) is zero percent.[1]

The claimant appealed all of the hearing officer's determinations, contending that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The carrier responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), that extends to a right wrist sprain. The claimant testified that she was injured while placing a plastic car bumper in a box.

EXTENT OF INJURY AND IR

The hearing officer's determination that the compensable injury of (date of injury), does not extend to right shoulder sprain or strain, right shoulder internal derangement, right wrist derangement, cervical sprain or strain, or cervical disc protrusion is supported by sufficient evidence and is affirmed.

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

MMI

[1] We note that the decision contains an incorrect suite number for the address of the respondent's (carrier) registered agent for service of process.

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.

(Dr. G), the designated doctor appointed by the Division, examined the claimant on September 16, 2014. Dr. G certified in a Report of Medical Evaluation (DWC-69) and narrative report dated that same date that the claimant reached MMI on June 11, 2014, with a zero 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), considering a right wrist sprain.

On March 9, 2015, the hearing officer sent a letter of clarification (LOC) to Dr. G regarding Dr. G's IR. Dr. G responded on March 12, 2015, and explained that he used the range of motion (ROM) measurements taken during his examination rather than ROM measurements taken during a Functional Capacity Evaluation on May 31, 2014, because he questioned the accuracy of those measurements. Dr. G did not change his June 11, 2014, date of MMI in his response to the hearing officer's LOC. We note that the only DWC-69 from Dr. G in evidence certifies that the claimant reached MMI on June 11, 2014.

The hearing officer noted in the discussion portion of the decision that "[Dr. G] examined [the] [c]laimant on September 16, 2014, and certified MMI on June 11, 2014, with a [zero percent] IR. He provided a reasonable explanation for the choice of MMI date," and that "[Dr. G's] certification is not contrary to the preponderance of the other medical evidence." The hearing officer found in Finding of Fact No. 4 that Dr. G's certification is not contrary to the preponderance of the other medical evidence; however, the hearing officer mistakenly found that Dr. G certified the claimant reached MMI on September 16, 2014, rather than June 11, 2014, the actual MMI date certified by Dr. G. The hearing officer also stated in Conclusion of Law No. 4 and the Decision that the claimant reached MMI on September 16, 2014, rather than June 11, 2014, as he had noted in his discussion.

It is clear from the hearing officer's discussion and the evidence that the hearing officer was persuaded that Dr. G's certification that the claimant reached MMI on June 11, 2014, with a zero percent IR was not contrary to the preponderance of the other medical evidence. This is supported by sufficient evidence. The only other MMI/IR

certification in evidence that considers and rates a right wrist sprain, which is the compensable injury in this case, is from (Dr. W), a referral doctor acting in place of the treating doctor.

Dr. W examined the claimant on June 14, 2014. Considering a right wrist sprain, Dr. W certified that the claimant reached MMI on June 14, 2014, with a two percent whole person impairment using the AMA Guides. Dr. W assessed two percent upper extremity (UE) impairment based on 50° of extension of the claimant's right wrist using Figure 26 on page 3/36. Dr. W also assessed one percent UE impairment based on 25° of ulnar deviation of the claimant's right wrist using Figure 29 on page 3/38. Dr. W failed to round the measurements of ulnar deviation of the wrist to the nearest 10° to determine the UE impairment. Dr. W did not properly apply the AMA Guides in assessing the claimant's IR. *See* Appeals Panel Decision (APD) 022504-s, decided November 12, 2002; APD 111384, decided November 23, 2011. *See also* APD 131541, decided August 29, 2013. As such his MMI/IR certification could not be adopted.

The evidence reflects that Dr. G certified the claimant reached MMI on June 11, 2014, not September 16, 2014. There is no certification in evidence from any doctor that the claimant reached MMI on September 16, 2014. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on September 16, 2014, and render a new decision that the claimant reached MMI on June 11, 2014, as reflected by the evidence and the record.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to right shoulder sprain or strain, right shoulder internal derangement, right wrist derangement, cervical sprain or strain, or cervical disc protrusion.

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

We reverse the hearing officer's determination that the claimant reached MMI on September 16, 2014, and we render a new decision that the claimant reached MMI on June 11, 2014.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge