

APPEAL NO. 150817  
FILED JUNE 18, 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 23, 2015, in San Antonio, 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 C4-5 and C5-6 herniated discs with radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 24, 2014; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the hearing officer's extent of injury, MMI, and IR determinations. The claimant contends that evidence established that the compensable injury extends to the disputed conditions and that she has not yet reached MMI. The respondent (carrier) responded, urging affirmance of the disputed determinations.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated in part that the claimant sustained a compensable injury on (date of injury), in the form of a cervical sprain/strain while lifting a case of soda and that (Dr. M) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor for the purpose of extent of injury, MMI and IR.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of (date of injury), does not extend to C4-5 and C5-6 herniated discs with radiculopathy is supported by sufficient evidence and is affirmed.

**IR**

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

**MMI**

Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the 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 parties stipulated in part that Dr. M determined that the claimant reached MMI on November 24, 2014, with an IR of five percent. However, the evidence reflects that Dr. M actually certified that the claimant reached MMI on November 12, 2014, with a five percent IR. Dr. M examined the claimant on November 12, 2014, and certified that the claimant reached MMI on that date. Dr. M stated in her narrative report that the claimant has reached MMI for the recognized condition of cervical sprain/strain; that the date of MMI is November 12, 2014, the date of the exam; that the claimant has undergone significant medical care for her neck; and at this time ongoing treatment appears to be palliative in nature. Dr. M completed a Report of Medical Evaluation (DWC-69) and certified that the claimant reached MMI on November 12, 2014. There is no DWC-69 from Dr. M or any other doctor that certified that the claimant reached MMI on November 24, 2014. The hearing officer was persuaded that the certification of Dr. M was supported by the preponderance of the other medical evidence consisting of the records of the claimant's treating doctors, the referral doctor, and the results of the diagnostic tests. However, the hearing officer mistakenly referenced an incorrect date of MMI, November 24, 2014, in Finding of Fact No. 5, Conclusion of Law No. 4, and his decision. We reverse the hearing officer's determination that the claimant reached MMI on November 24, 2014, and render a new decision that the claimant reached MMI on November 12, 2014, to conform to the evidence in the record.

### **SUMMARY**

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to include C4-5 and C5-6 herniated discs with radiculopathy.

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

We reverse the hearing officer's determination that the claimant reached MMI on November 24, 2014, and render a new decision that the claimant reached MMI on November 12, 2014, to conform to the evidence in the record.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge