

APPEAL NO. 150873
FILED JULY 13, 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 April 7, 2015, with the record closing on April 13, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on November 21, 2014, and (2) the impairment rating (IR) is four percent.

The claimant appeals the hearing officer's MMI and IR determinations and requests that the certification of MMI and IR from the doctor acting in place of the treating doctor be adopted. The respondent (carrier) responds urging affirmance of the hearing officer's decision. Also, the carrier filed a Motion to Correct Clerical Error asserting that the hearing officer's decision and order contains the incorrect employer and consequently the incorrect carrier. The carrier requests a clerical correction to the hearing officer's decision with regard to the employer's and carrier's information.

DECISION

Reversed and remanded.

EMPLOYER AND CARRIER

The parties stipulated at the CCH, in part, that: (1) on (date of injury), the claimant was the employee of Marriott International Inc., employer, and (2) on (date of injury), the employer provided workers' compensation insurance through New Hampshire Insurance Company, carrier. However, the carrier contends that, the correct name of the employer is Hospitality Staffing Solutions LLC, and the correct carrier is Pennsylvania Manufacturers Association Insurance Company. The carrier attached a new carrier information sheet listing Pennsylvania Manufacturers Association Insurance Company, as the carrier.

In *Houston Gen. Ins. Co. v. Association Cas. Ins. Co.*, 977 S.W.2d 634 (Tex. App.-Tyler 1998, no pet.), the Tyler Court of Appeals held that workers' compensation coverage may not be extended by waiver or estoppel. This case is similar to Appeals Panel Decision (APD) 042725, decided December 15, 2004, where information was sent to the Texas Department of Insurance, Division of Workers' Compensation (Division) after the CCH, advising that the carrier did not have coverage. See *also* APD 132905, decided February 18, 2014, and APD 070514, decided May 1, 2007. Because of the uncertainty as to the identity of the proper employer and carrier in this case, we

remand the case to the hearing officer to determine the proper employer and carrier, and, if it is a different employer and/or carrier other than the employer and carrier listed on the hearing officer's decision, the hearing officer is to hold another hearing with the proper employer and carrier present at the CCH. On remand, the hearing officer shall take official notice of the Division records regarding the proper employer and carrier in this case. The parties are to be allowed an opportunity to present evidence as to the correct carrier and the issues in this proceeding.

MMI AND IR

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for the hearing officer to determine the proper employer and carrier in this case, we note that there is conflicting evidence as to whether the compensable injury is to the left or right knee/hip.

At the CCH the parties stipulated that the claimant sustained a compensable injury on (date of injury), which includes a lumbar sprain, left hip sprain, left knee sprain, and left partial thickness tear of the distal anterior cruciate ligament (ACL). The Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) dated July 30, 2014, states that the compensable injury includes a lumbar sprain, left hip sprain, left knee sprain, and left partial thickness tear of the distal ACL. The Request for Designated Doctor Examination (DWC-32) lists that the carrier has accepted as compensable a lumbar sprain, left hip sprain, left knee sprain, and left partial thickness tear of the distal ACL.

However, at the same CCH, the claimant testified that she injured her right knee. In evidence is an operative report dated June 17, 2014, indicating the claimant had surgery to her right knee. The hearing officer adopted the designated doctor's certification of MMI/IR which considered and rated a right knee sprain and tear of the ACL, lumbar spine, and a contusion/sprain of the right hip. Given that there is conflicting evidence as to what the compensable injury of (date of injury), includes, the hearing officer's MMI and IR determination are not supported by the evidence. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on November 21, 2014, with a four percent IR, and we remand the MMI and IR issues to the hearing officer to make a determination consistent with this decision.

REMAND INSTRUCTIONS

On remand, the hearing officer shall take official notice of the Division records regarding the proper employer and carrier in this case. The hearing officer is to hold another hearing with the proper employer and carrier present at the CCH. The parties are to be allowed an opportunity to present evidence as to the correct employer and carrier. The hearing officer is to determine the proper employer and carrier in this case.

(Dr. C) is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. C is still qualified and available to be the designated doctor. If Dr. C is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the compensable injury of (date of injury).

The hearing officer is to clarify with the parties whether the compensable injury of (date of injury), is to the left or right knee/ankle, either by stipulation or based on the evidence presented at the CCH. Thereafter, if a certification of MMI and IR in evidence is adoptable that considers and rates the entire compensable injury, the hearing officer is then to make a determination on the issues of MMI and IR.

If necessary, the hearing officer is to inform the designated doctor what injuries are included in the compensable injury of (date of injury). The hearing officer is to request the designated doctor to give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with 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), and considering the medical record and the certifying examination.

The parties are to be provided with the hearing officer's letter to the designated doctor and the designated doctor's response. The parties are to be allowed an opportunity to respond.

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 **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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge