APPEAL NO. 150925
FILED ON 07/13/2015

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 22, 2015, in Beaumont, 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 an HNP at L5-S1 or lumbar radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 30, 2014; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant did not have disability resulting from the compensable injury from May 30, 2014, to the CCH.

The claimant appealed all of the hearing officer's determinations, essentially arguing that the evidence does not support the hearing officer's determinations. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), which includes a lumbar strain. The claimant testified he injured his low back when he lifted a tray weighing approximately 50 pounds.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to an HNP at L5-S1 or lumbar radiculopathy is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant did not have disability resulting from the compensable injury from May 30, 2014, to the CCH is supported by sufficient evidence and is affirmed.

MMI/IR

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.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer determined that the claimant reached MMI on May 30, 2014, with a five percent IR as certified by (Dr. Pk), a referral doctor.

Dr. Pk examined the claimant on January 12, 2015, and certified that the claimant reached MMI on May 30, 2014, 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. Pk made clear in his Report of Medical Evaluation (DWC-69) and attached narrative report that he considered lumbar radiculopathy and lumbar IVD disorder. As noted above, the hearing officer's determination that the compensable injury does not extend to an HNP at L5-S1 or lumbar radiculopathy has been affirmed as being supported by the evidence, and the parties neither stipulated to nor litigated the compensability of lumbar IVD disorder. Dr. Pk considered lumbar radiculopathy, a condition that has been determined to not be part of the compensable injury, as well as lumbar IVD disorder, a condition that has not at this time been determined to be compensable. Accordingly, we reverse the hearing officer's determinations that the claimant reached MMI on May 30, 2014, with a five percent IR.

The evidence contains two other MMI/IR certifications, both of which are from (Dr. Pz), the designated doctor. Dr. Pz examined the claimant on August 19, 2014, and in the first DWC-69 certified that the claimant reached MMI on May 30, 2014, with a five percent IR using the AMA Guides. Dr. Pz made clear in his DWC-69 and attached narrative report that this MMI/IR certification is based on diagnoses of a lumbar sprain/strain, an HNP at L5-S1, and lumbar radiculopathy. As discussed above, the hearing officer's determination that the compensable injury does not extend to an HNP

at L5-S1 or lumbar radiculopathy has been affirmed as being supported by the evidence. Dr. Pz's first MMI/IR certification considers and rates conditions that have been determined to not be part of the compensable injury, and as such cannot be adopted.

Dr. Pz also submitted an alternate DWC-69, in which he again certified that the claimant reached MMI on May 30, 2014, with a five percent IR. Dr. Pz noted a diagnosis of a lumbar strain, a condition which the parties have stipulated is part of the compensable injury. However, while Dr. Pz's DWC-69 contains an MMI date of May 30, 2014, Dr. Pz's narrative report discusses conflicting MMI dates of May 30 and May 23, 2014. Additionally, Dr. Pz's narrative report contains conflicting information regarding the claimant's IR. Dr. Pz stated on one page of his narrative report that he placed the claimant in Diagnosis-Related Estimate (DRE) Lumbosacral Category II: Complaints or Symptoms for five percent impairment for the claimant's lumbar spine. However, on another page of his narrative report Dr. Pz stated that he placed the claimant in "DRE Thoracolumbar Category II: [C]omplaints or [S]ymptoms" for five percent impairment for the claimant's "thoracolumbar spine." The parties neither stipulated to nor litigated any thoracic spine condition.

The hearing officer noted in his discussion these inconsistencies contained in Dr. Pz's report, and impliedly found that the preponderance of the evidence did not support his MMI/IR certification. We agree. Accordingly, Dr. Pz's MMI/IR certification cannot be adopted.

As there is no MMI/IR certification in evidence that can be adopted, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to an HNP at L5-S1 or lumbar radiculopathy.

We affirm the hearing officer's determination that the claimant did not have disability resulting from the compensable injury from May 30, 2014, to the CCH.

We reverse the hearing officer's determinations that the claimant reached MMI on May 30, 2014, 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. Pz is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. Pz is still qualified and available to be the designated doctor. If Dr. Pz 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(date of injury), compensable injury.

The hearing officer is to inform the designated doctor that the (date of injury), compensable injury extends to a lumbar strain. The hearing officer is also to inform the designated doctor that the (date of injury), compensable injury does not extend to an HNP at L5-S1 or lumbar radiculopathy.

The hearing officer is to request the designated doctor to give an opinion on the claimant's MMI and IR by rating 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 designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on 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* Appeals Panel Decision 060721, decided June 12, 2006.

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

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

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge