

APPEAL NO. 150997
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 May 19, 2014, with the record closing on April 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 Reflex Sympathetic Dystrophy Syndrome/Chronic Regional Pain Syndrome (RSD/CRPS), or chronic pain; (2) the (date of injury), compensable injury does extend to chondromalacia and chronic pain; (3) the appellant (claimant) reached maximum medical improvement (MMI) on October 20, 2012; and (4) the claimant's impairment rating (IR) is four percent.

The claimant appealed the hearing officer's determinations that were adverse to her essentially on a sufficiency of the evidence point of error. The respondent (self-insured) 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), at least in the form of a left knee sprain/strain, left knee contusion, and chondromalacia of the left knee, and that statutory MMI is February 23, 2014. The claimant testified she injured her left knee when a steel jail door closed on her left knee.

EXTENT OF INJURY

The hearing officer's determination that the (date of injury), compensable injury extends to chondromalacia is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the (date of injury), compensable injury does not extend to RSD/CRPS is supported by sufficient evidence and is affirmed.

Also at issue before the hearing officer as noted by the benefit review conference report and as agreed to by the parties at the CCH was whether the (date of injury), compensable injury extends to chronic pain. The hearing officer in Finding of Fact No. 5 found in part that chronic pain was not caused or aggravated by the compensable injury, and stated in Conclusion of Law No. 3 that the (date of injury), compensable injury does not extend to chronic pain. However, the hearing officer then stated in

Conclusion of Law No. 4 in part that the (date of injury), compensable injury does extend to chronic pain. The Decision and Order and Decision portions of the decision also contain these conflicting statements about the compensability of chronic pain. The hearing officer stated the following in the Discussion portion of the decision:

The Chronic Pain Recovery Center noted that the injury caused the previous hardware screws to be pushed into [the] [c]laimant's tendons which necessitated the removal of the hardware which was the cause of some of [the] [c]laimant's pain. However, this is not persuasive to provide a causal connection to the compensable injury.

It is unclear from the hearing officer's decision whether or not the (date of injury), compensable injury extends to chronic pain, and we do not feel it is appropriate to render a decision regarding the compensability of this condition. Accordingly, we reverse the hearing officer's decision as being conflicting, and we remand the issue of whether the (date of injury), compensable injury extends to chronic pain to the hearing officer for further action consistent with this decision.

MMI/IR

The hearing officer determined that the claimant reached MMI on October 20, 2012, with a four percent IR as certified by (Dr. M), the designated doctor. However, given that we have reversed and remanded a portion of the extent-of-injury determination to the hearing officer, we also reverse the hearing officer's determination that the claimant reached MMI on October 20, 2012, with a four percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

There are several MMI/IR certifications in evidence, which are from Dr. M, the designated doctor, (Dr. G), a previously-assigned designated doctor, and (Dr. KM), a doctor selected by the treating doctor to act in place of the treating doctor. However, as correctly noted by the hearing officer in her decision, some of these MMI/IR certifications contain errors that would prevent their adoption regardless of however the hearing officer determines the compensability of chronic pain.

Dr. G examined the claimant on March 1, 2013, and certified that the claimant had not reached MMI but was expected to do so on June 1, 2013. Dr. G next examined the claimant on June 11, 2013, and certified that the claimant reached MMI on May 24, 2013, with a zero percent IR. However, Dr. G considered only a left knee sprain. As discussed above the parties stipulated that the compensable injury is at least a left knee sprain/strain, left knee contusion, and chondromalacia. Dr. G failed to consider the entire compensable injury, and as such his MMI/IR certification cannot be adopted.

Dr. KM examined the claimant on January 6, 2014, and certified on January 13, 2014, that the claimant reached MMI on January 2, 2014, with a four percent IR. However, Dr. KM makes clear in his report that he considered a left knee contusion and left knee internal derangement. The parties neither stipulated to nor actually litigated the compensability of left knee internal derangement. Dr. KM failed to consider the entire compensable injury, and also considered a condition that has not at this time been determined to be part of the compensable injury. Accordingly, his MMI/IR certification cannot be adopted.

SUMMARY

We affirm the hearing officer's determination that the (date of injury), compensable injury extends to chondromalacia.

We affirm the hearing officer's determination that the (date of injury), compensable injury does not extend to RSD/CRPS.

We reverse the hearing officer's decision as being conflicting, and we remand the issue of whether the (date of injury), compensable injury extends to chronic pain to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on October 20, 2012, with a four percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

The hearing officer is to make a determination whether the compensable injury of (date of injury), extends to chronic pain. Based on the hearing officer's determination regarding the compensability of chronic pain, the hearing officer is then to determine whether an MMI/IR certification that rates the entire compensable injury is in evidence or whether a new MMI/IR certification by the designated doctor is necessary.

Dr. M is the most recently-appointed designated doctor appointed by the Division for purposes of MMI and IR. The hearing officer is to determine whether Dr. M is still qualified and available to be the designated doctor for MMI/IR. If Dr. M is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 28 TEX. ADMIN. CODE § Rule 127.5(c) to determine MMI and the IR.

If a new MMI/IR certification is necessary, the hearing officer is to inform the designated doctor that the (date of injury), compensable injury extends to a left knee sprain/strain, left knee contusion, and chondromalacia of the left knee. The hearing

officer is also to inform the designated doctor that the (date of injury), compensable injury extends to chronic pain depending upon her determination on that condition as remanded.

The hearing officer is also to inform the designated doctor that the (date of injury), compensable injury does not extend to RSD/CRPS, and chronic pain depending upon her determination on that condition as remanded. The hearing officer is further to inform the designated doctor that the date of statutory MMI in this case is February 23, 2014, as stipulated by the parties.

The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is to make determinations which are supported by the evidence on extent of injury, 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 **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET, 6TH FLOOR
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
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For service by mail the address is:

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Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge