

APPEAL NO. 151036
FILED JULY 20, 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 April 8, 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 extends to a lumbar herniation/protrusion at L4-5 with radiculopathy, lumbar neurogenic claudication, and a disc protrusion at C6-7; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on March 15, 2013; and (3) the claimant's impairment rating (IR) is 8%.

The claimant appealed the hearing officer's MMI and IR determinations based on sufficiency of the evidence. The respondent/cross-appellant (self-insured) responded to the claimant's appeal, urging affirmance of the hearing officer's MMI and IR determinations. The self-insured also filed a cross-appeal, arguing that the hearing officer's extent-of-injury determination is not supported by the evidence. The claimant responded to the self-insured's appeal, urging affirmance of the hearing officer's extent-of-injury determination.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that she tripped over cords on the floor, and fell forward and then landed on her buttocks. The parties stipulated that the claimant sustained a compensable injury on (date of injury), at least in the form of a right knee sprain/strain, cervical sprain/strain, right shoulder sprain/strain, right shoulder supraspinatus and infraspinatus tendon tears, and the statutory MMI date is March 15, 2013.

EXTENT OF INJURY

The hearing officer's determination that the (date of injury), compensable injury extends to a lumbar herniation/protrusion at L4-5 with radiculopathy, lumbar neurogenic claudication, and a disc protrusion at C6-7 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 March 15, 2013, with an 8% IR as certified by (Dr. E), the designated doctor.

Dr. E examined the claimant on June 11, 2014, and on a Report of Medical Evaluation (DWC-69) dated July 1, 2014, certified that the claimant reached MMI on March 15, 2013, with an 8% 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. E considered and rated the right knee sprain/strain, cervical sprain/strain, right shoulder sprain/strain, right shoulder supraspinatus and infraspinatus tendon tears, lumbar neurogenic claudication and disc protrusion at C6-7; however, Dr. E did not consider or rate the lumbar herniation/protrusion at L4-5 with radiculopathy, which was determined by the hearing officer to be part of the compensable injury. Dr. E did not consider and rate the entire compensable injury, and as such his MMI/IR certification cannot be adopted. Accordingly, we reverse the hearing officer’s determinations that the claimant reached MMI on March 15, 2013, with an 8% IR.

Dr. E provided an alternate certification for the accepted compensable injuries, and did not consider or rate the conditions determined by the hearing officer to be part of the compensable injury. Dr. E examined the claimant on June 11, 2014, and certified that the claimant reached MMI on March 15, 2013, with an 8% IR, for a right knee sprain/strain, cervical sprain/strain, right shoulder sprain/strain, and right shoulder supraspinatus and infraspinatus tendon tears. Dr. E did not consider or rate the lumbar herniation/protrusion at L4-5 with radiculopathy, lumbar neurogenic claudication, and

disc protrusion at C6-7. Dr. E's alternate certification does not consider or rate the entire compensable injury, and as such the alternate certification cannot be adopted.

There are two other MMI/IR certifications in evidence from (Dr. F), the treating doctor, and (Dr. O), the first designated doctor appointed by the Division; however, neither of these certifications of MMI/IR can be adopted because they did not consider or rate the entire compensable injury as discussed below.

Dr. F examined the claimant on March 13, 2013, and opined that the claimant reached MMI on March 11, 2013, with a 25% IR for the cervical, right shoulder, and right knee. Dr. F did not consider or rate the lumbar herniation/protrusion at L4-5 with radiculopathy, lumbar neurogenic claudication, and disc protrusion at C6-7. Dr. F did not consider or rate the entire compensable injury, as such Dr. F's certification cannot be adopted. Furthermore, we note that the certification that lists an MMI date of March 11, 2013, with a 25% IR has conflicting information with regard to the name of the certifying doctor, date of examination, and date of certification. The narrative report dated March 11, 2013, which is signed by Dr. F, however, the DWC-69 is signed by. We note both Dr. F and Dr. J have the same address. Furthermore, the DWC-69 signed by Dr. J lists the examination date as March 13, 2013; however, the certification is dated March 11, 2013, which is two days prior to the examination date of March 11, 2013.

Dr. O examined the claimant on May 4, 2013, and in a DWC-69 dated May 4, 2013, certified that the claimant reached MMI on March 15, 2013, with a 7% IR for the cervical spine, right shoulder, and right knee. Dr. O did not consider or rate the lumbar herniation/protrusion at L4-5 with radiculopathy, lumbar neurogenic claudication, and disc protrusion at C6-7. Dr. O did not consider or rate the entire compensable injury, as such Dr. O's certification cannot be adopted.

There are no other MMI/IR certifications in evidence that can be adopted. Accordingly, 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 (date of injury), compensable injury extends to a lumbar herniation/protrusion at L4-5 with radiculopathy, lumbar neurogenic claudication, and a disc protrusion at C6-7.

We reverse the hearing officer's determinations that the claimant reached MMI on March 15, 2013, with an 8% IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. E is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. E is still qualified and available to be the designated doctor. If Dr. E 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 right knee sprain/strain, cervical sprain/strain, right shoulder sprain/strain, right shoulder supraspinatus and infraspinatus tendon tears, lumbar herniation/protrusion at L4-5 with radiculopathy, lumbar neurogenic claudication, and a disc protrusion at C6-7. The hearing officer is further to inform the designated doctor that the statutory date of MMI is March 15, 2013.

The hearing officer is to request the designated doctor to give an opinion on the claimant's MMI, which can be no later than March 15, 2013, the statutory date of 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 **THE UNIVERSITY OF TEXAS SYSTEM (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MELISSA STEGER
ASSISTANT DIRECTOR WORKERS' COMPENSATION
210 WEST SIXTH STREET, SUITE B 140E
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge