

APPEAL NO. 151219
FILED AUGUST 6, 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 May 28, 2015, in Fort Worth, 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), extends to left knee Grade 3 chondromalacia of the lateral facet of the patella, mild chondromalacia of the medial compartment, and Grade 3 near 4 chondromalacia of the lateral tibial plateau; (2) the date of maximum medical improvement (MMI) is July 24, 2014; and (3) the respondent's (claimant) impairment rating (IR) is 15%.

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

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified he sustained a left knee injury when he was hit by a forklift at work on (date of injury). The parties stipulated that the accepted compensable injury is a left knee medial meniscus tear. The Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. S) as designated doctor to opine on MMI, IR, and extent of injury. (Dr. P) is the referral doctor. (Dr. R) is the treating surgeon. In evidence is an operative report from Dr. R dated April 24, 2014, which shows that the claimant underwent a left total knee replacement.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), extends to left knee Grade 3 chondromalacia of the lateral facet of the patella, mild chondromalacia of the medial compartment, and Grade 3 near 4 chondromalacia of the lateral tibial plateau is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the date of MMI is July 24, 2014, is supported by sufficient evidence and is affirmed.

IR

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's IR is 15% based on Dr. P's certification. Dr. P examined the claimant on October 3, 2014, and in a Report of Medical Evaluation (DWC-69) certified that the claimant reached MMI on July 24, 2014, with a 15% 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. P states in his narrative report dated October 3, 2014, that he used Table 66, Rating Knee Replacement Results, on page 3/88 and calculated a sum of 74 points for a left total knee replacement. Dr. P then used Table 64 on page 3/85 to place the claimant in the "Good result, 85-100 points" category for a total knee replacement which results in a 15% whole person impairment (WPI). In this case, Dr. P misapplied the AMA Guides by miscalculating a sum of 74 points using Table 66, and in placing the claimant in the "Good result, 85-100 points" category, based on the sum of 74 points, which resulted in a 15% IR using Table 64.

First, we note that Table 66 is based on a point system for estimating a knee replacement. Table 66 consists of six categories: (a) pain; (b) range of motion (ROM); (c) stability; (d) flexion contracture; (e) extension lag; and (f) alignment. Each category has a point value based on the physical findings of the knee. The final point score is the sum of the points from categories a, b, and c, minus the sum of points from categories d, e, and f.

Second, we note that Table 64, under the knee region for total knee replacement, contains three categories based on the point score from Table 66. The three categories are: "Good result, 85-100 points" for an estimate of 15% WPI; "Fair result, 50-84 points" for an estimate of 20% WPI; and "Poor result, less than 50 points" for an estimate of 30% WPI. The point score from Table 66 is what is used to classify a result as good, fair, or poor in Table 64.

In this case, Dr. P used Table 66 and Table 64 to rate the claimant's left total knee replacement. Using Table 66 Dr. P assessed for categories a, b, and c as follows:

(a) pain from walking and stairs (30 points); (b) ROM at 110 degrees (25 points); and (c) stability at anteroposterior less than 5 mm (10 points) and mediolateral at 5 degrees or less (15 points). Although not stated in Dr. P's narrative report, the sum of categories a, b, and c are $30 + 25 + 10 + 15 = 80$ points. We note that Table 66 instructs that for ROM to add 1 point per 5 degrees. Dr. P assessed a ROM of 110 degrees which results in 22 points ($110/5 = 22$), rather than 25 points.

Dr. P assessed for the deduction categories d, e, and f, as follows: (d) flexion contracture less than 5 degrees (0 points); (e) extension lag less than 10 degrees (5 points); and (f) alignment is 12 degrees (21 points). Although not stated in Dr. P's narrative report, the sum of categories d, e, and f are $0 + 5 + 21 = 26$ points.

Dr. P states that the resultant score is 74 points. However, we note that based on Dr. P's findings the actual resultant score is 54 points based on the sum of 80 points for categories a, b, and c, minus the sum of 26 points for categories d, e, and f. The total points results in 54 points, rather than 74 points. Dr. P misapplied the AMA Guides by miscalculating a sum of 74 points using Table 66.

Dr. P used the resultant score of 74 points from Table 66 to classify the claimant in either a good, fair, or poor category using Table 64. Dr. P used the 74 points calculated from Table 66 and placed the claimant in the "Good result, 85-100 points" which results in a 15% WPI. We note that a score of 74 points calculated from Table 66 shows placement in the "Fair result, 50-84 points" which results in a 20% WPI as referenced in Table 64. Dr. P misapplied the AMA Guides by placing the claimant in the "Good result, 85-100 points" in Table 64, given that he calculated 74 points using Table 66.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. However, as previously explained, Dr. P misapplied the AMA Guides by miscalculating a sum of 74 points using Table 66, and in placing the claimant in the "Good result, 85-100 points," based on 74 points, resulting in a 15% IR using Table 64. Also, as noted above, Dr. P miscalculated the points assessed for ROM based on the measurement contained in his narrative report and assessed 25 points rather than 21 points for the claimant's ROM of 110 degrees.

Given that Dr. P's narrative report has numerous inaccuracies and discrepancies in applying the AMA Guides, we do not consider it appropriate to mathematically correct his IR. Dr. P's certification cannot be adopted. The hearing officer based his IR determination on Dr. P's certification that the claimant has a 15% IR. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 15%.

The other certification in evidence is from Dr. S, the designated doctor. Dr. S examined the claimant on August 12, 2014, and in a DWC-69 certified that the claimant reached MMI on March 10, 2014, with a 4% IR using the AMA Guides. Dr. S's certification cannot be adopted because the date of MMI is not as of July 24, 2014, and he did not consider and rate the entire compensable injury. The hearing officer determined that Dr. S's certification is contrary to the preponderance of the evidence and that determination is supported by sufficient evidence.

There are no other certifications in evidence with a date of MMI of July 24, 2014, that can be adopted. Accordingly, we remand the IR issue 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), extends to left knee Grade 3 chondromalacia of the lateral facet of the patella, mild chondromalacia of the medial compartment, and Grade 3 near 4 chondromalacia of the lateral tibial plateau.

We affirm the hearing officer's determination that the date of MMI is July 24, 2014.

We reverse the hearing officer's determination that the claimant's IR is 15%, and we remand the IR issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. S is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. S is still qualified and available to be the designated doctor. If Dr. S 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 IR for the (date of injury), compensable injury.

The hearing officer is to advise the designated doctor that the date of MMI is July 24, 2014, and that the compensable injury of (date of injury), is a left knee medial meniscus tear, left knee Grade 3 chondromalacia of the lateral facet of the patella, mild

chondromalacia of the medial compartment, and Grade 3 near 4 chondromalacia of the lateral tibial plateau. The hearing officer is to advise the designated doctor that the claimant had a left total knee replacement surgery on April 24, 2014, due to his compensable injury.

The hearing officer is to request the designated doctor to rate the entire compensable injury as of the date of MMI, which is July 24, 2014, in accordance with the AMA Guides and considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI and IR certification, as of the date of MMI of July 24, 2014, and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the claimant's IR for the (date of injury), compensable injury as of the MMI date of July 24, 2014.

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 **SENTRY INSURANCE, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TX 75201-3136.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret Turner
Appeals Judge