

APPEAL NO. 151371  
FILED AUGUST 11, 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 June 4, 2015, with the record closing on June 29, 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 August 14, 2014, and (2) the claimant's impairment rating (IR) is zero percent.

The claimant appealed the hearing officer's MMI and IR determinations based on sufficiency of the evidence. The claimant contends that he failed to attend the CCH and respond to the 10-day letter because he did not receive documentation that was mailed to his address of record. The claimant states that he did not know that a CCH was set for June 4, 2015. The respondent (self-insured) responded, urging affirmance of the hearing officer's determinations. The self-insured contends that a CCH was set for June 4, 2015, and notice was properly sent to the claimant.

**DECISION**

Affirmed in part and reversed and rendered in part.

It was undisputed that on (date of injury), the claimant sustained a compensable injury, and the compensable injury includes left ankle contusion and Grade I sprain.

**10-DAY LETTER**

The claimant did not attend the June 4, 2015, CCH, or respond to the 10-day letter that was sent to the claimant by the hearing officer after the CCH to the claimant's address of record. The hearing officer closed the record on June 29, 2015. The hearing officer determined that the claimant did not have good cause for his failure to appear for the CCH of June 4, 2015.

On appeal the claimant contends that he did not recall receiving documentation that was mailed to his address of record. The claimant states that he did not know that a CCH was set for June 4, 2015. The hearing officer's 10-day letter in the appeal file was sent to the claimant's correct address. The claimant does not provide any additional information regarding a reason he may not have received the 10-day letter. The hearing officer's determination that the claimant did not have good cause for his failure to appear for the CCH of June 4, 2015, is supported by sufficient evidence.

**STIPULATION CORRECTIONS**

We note that the record reflects that the hearing officer's decision contains errors and omission to the stipulations made by the self-insured at the CCH on June 4, 2015.

First, the hearing officer's Findings of Fact No. 1.B. and 1.C. incorrectly identifies a date of injury of (date of injury), rather than (date of injury), as stipulated to by the self-insured at the CCH on June 4, 2015.

Second, the hearing officer's Finding of Fact No. 1.E. incorrectly identifies the date the designated doctor, (Dr. F), certified that the claimant reached MMI as August 14, 2014, rather than August 4, 2014, as stipulated to by the self-insured at the CCH on June 4, 2015, and supported by the evidence.

Lastly, the hearing officer omitted a stipulation made by the self-insured at the CCH on June 4, 2015, that the claimant sustained a compensable injury on (date of injury).

We reform the hearing officer's decision by correcting Findings of Fact No. 1.B., 1.C., and 1.E. and by adding Finding of Fact No. 1.F. to reflect the correct stipulations made by the self-insured at the June 4, 2015, CCH as follows:

Findings of Fact No. 1.

B. On (date of injury), the claimant was the employee of General Motors, L.L.C. Employer.

C. On (date of injury), Employer provided workers' compensation insurance as a certified self-insured.

E. Designated doctor, Dr. F, certified that the claimant reached MMI on August 4, 2014, with a zero percent IR.

F. On (date of injury), the claimant sustained a compensable injury.

#### **IR**

The hearing officer's determination that the claimant's IR is zero percent based on Dr. F's certification is supported by sufficient evidence and is affirmed.

#### **MMI**

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 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.

The hearing officer determined that the claimant reached MMI on August 14, 2014, with a zero percent IR based on the certification of Dr. F, the designated doctor. We note that there is only one certification of MMI and IR in evidence. There is no certification from Dr. F, the designated doctor, or any other doctor that certified that the claimant reached MMI on August 14, 2014.

In this case, the self-insured stipulated in part that Dr. F certified that the claimant reached MMI on August 4, 2014, with a zero percent IR, as discussed above. Dr. F examined the claimant on September 23, 2014, and in a Report of Medical Evaluation (DWC-69) certified that the claimant reached MMI on August 4, 2014, with zero 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). Dr. F explained in his narrative report dated September 23, 2014, that the claimant had reached MMI on August 4, 2014, because the claimant's left ankle sprain had resolved.

The hearing officer determined that the certification of Dr. F was not contrary to the preponderance of the other medical evidence. However, the hearing officer mistakenly referenced an incorrect date of MMI, August 14, 2014, in Finding of Fact No. 6, Conclusion of Law No. 3, and his decision. Given that the evidence reflects that Dr. F actually certified that the claimant reached MMI on August 4, 2014, with a zero percent, we reverse the hearing officer's MMI determination. We reverse the hearing officer's determination that the claimant reached MMI on August 14, 2014, and render a new decision that the claimant reached MMI on August 4, 2014, to conform to the evidence in the record.

### **SUMMARY**

We reform the hearing officer's decision by correcting Findings of Fact No. 1.B., 1.C., and 1.E. and by adding Finding of Fact No. 1.F. to the hearing officer's decision.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

We reverse the hearing officer's determination that the claimant reached MMI on August 14, 2014, and we render a new decision that the claimant reached MMI on August 4, 2014.

The true corporate name of the insurance carrier is **GENERAL MOTORS, L.L.C. (a certified self-insured)** and the name and address of its registered agent for service of process is

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge