APPEAL NO. 152290
FILED JANUARY 21, 2016

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 November 9, 2015, in San Antonio, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) reached maximum medical improvement (MMI) on March 2, 2015; (2) the claimant's impairment rating (IR) is six percent; and (3) the claimant had disability resulting from the compensable injury of (date of injury), from December 16, 2014, through March 2, 2015.

The appellant (carrier) appealed the hearing officer's determinations regarding MMI and IR, urging that the evidence established that the claimant attained MMI on December 15, 2014, with a zero percent IR as determined by the designated doctor. The claimant responded, urging affirmance of the hearing officer's determinations.

The hearing officer's disability determination was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that: (1) the compensable injury [of (date of injury)], is a lumbar strain, a cervical strain and right Achilles' tendinitis; (2) (Dr. N), was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to determine MMI, IR, and return to work; (3) on February 20, 2015, Dr. N certified that the claimant reached MMI on December 15, 2014, and assigned a zero percent IR; and (4) on March 2, 2015, (Dr. C), treating doctor, certified that the claimant reached MMI on March 2, 2015, and assigned a six percent IR.

The claimant testified that he was working as a premises technician for the employer on (date of injury), when he tripped and fell into a manhole resulting in the injuries identified by the parties' stipulation mentioned above.

MMI

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 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.

Dr. N, the designated doctor, examined the claimant on January 30, 2015, and certified that he had reached MMI on December 15, 2014, the date of his most recent orthopedic consultation, with a zero percent IR. The hearing officer, noting that the claimant underwent additional medical treatment following the designated doctor's examination, found more persuasive the certification of the treating doctor, Dr. C, who certified that the claimant reached MMI on March 2, 2015.

The hearing officer's determination that the claimant reached MMI on March 2, 2015, 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.

Dr. C examined the claimant on March 2, 2015, and certified that the claimant reached MMI on that date. Dr. C listed an IR of five percent on her Report of Medical Evaluation (DWC-69) dated March 2, 2015; however, Dr. C's narrative report lists an IR of six percent. Because there is an internal inconsistency between the IRs assigned by Dr. C on the DWC-69 and in her attached narrative report, her assignment of IR is not adoptable. Accordingly, we reverse the hearing officer's determination that the IR is six percent.

The only other certification of MMI/IR in evidence is that of Dr. N, the designated doctor, who certified that the claimant reached MMI on December 15, 2014, with a zero percent IR. Given that we have affirmed the hearing officer's determination that the claimant reached MMI on March 2, 2015, Dr. N's certification cannot be adopted.

Since there is no certification in evidence that can be adopted, we remand the issue of IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the claimant reached MMI on March 2, 2015.

We reverse the hearing officer's determination that the claimant's IR is six percent and remand the issue of IR to the hearing officer.

REMAND INSTRUCTIONS

Dr. N is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. N is still qualified and available to be the designated doctor. If Dr. N is no longer qualified or is not 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 as of the March 2, 2015, date of MMI.

If Dr. N is still qualified and available to serve as the designated doctor, the hearing officer is to advise Dr. N that the date of MMI is March 2, 2015, and request that Dr. N examine the claimant and assign an IR as of the date of MMI in accordance with Rule 130.1(c)(3) and 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).

The parties are to be provided with the designated doctor's new IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on IR consistent with the evidence and 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 **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge