

APPEAL NO. 160001
MARCH 3, 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 December 8, 2015, in El Paso, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) did have disability from December 2, 2014, and continuing through September 28, 2015; (2) the claimant reached maximum medical improvement (MMI) on December 1, 2014; (3) the claimant's impairment rating (IR) is nine percent; and (4) the respondent (carrier) is entitled to reduce the claimant's impairment income benefits (IIBs) to recoup the previous overpayment of \$2,112.86. The claimant appealed, disputing the hearing officer's determinations of MMI, IR, and recoupment. The claimant contends that the certification from (Dr. B), the doctor selected to act in place of the treating doctor is the correct certification of MMI/IR. Additionally, the claimant agrees in his appeal that the carrier overpaid him but contends he is still owed \$242.86. The carrier responded, urging affirmance of the determinations disputed by the claimant.

The hearing officer's determination that the claimant did have disability from December 2, 2014, and continuing through September 28, 2015, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury in the form of a concussion, lung contusion, laceration to the face, nasal fracture, fractures to the ribs, right arm fracture, and right knee sprain. The claimant testified that he was injured in a motor vehicle accident.

RECOUPMENT

The hearing officer's determination that the carrier is entitled to reduce the claimant's IIBs to recoup the previous overpayment of \$2,112.86 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 parties stipulated that the Division-selected designated doctor was (Dr. M) and that Dr. M certified that the claimant reached MMI on December 1, 2014, with a nine percent IR. Dr. M examined the claimant on December 1, 2014. Dr. M assessed nine percent impairment 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) for loss of range of motion of the right upper and lower extremities. Dr. M was subsequently sent a letter of clarification to ensure that all of the claimant’s injuries which had been accepted had been considered and rated. Dr. M responded to the letter of clarification noting that the claimant was examined for all his injuries and that there is no further or additional impairment, so no change is needed on the Report of Medical Evaluation (DWC-69).

In her discussion of the evidence the hearing officer stated in part the following: [g]iven the totality of the evidence, the preponderance of the evidence is not contrary to the designated doctor’s certification of [MMI] and [IR]. The hearing officer determined in Conclusion of Law No. 4 that the claimant reached MMI on December 1, 2014. The hearing officer determined in Conclusion of Law No. 5 that the claimant’s IR is nine percent. These determinations are reflected in the hearing officer’s decision. However, in Finding of Fact No. 4, the hearing officer mistakenly stated that the December 1, 2014, date of MMI and nine percent IR certified by the designated doctor is not supported by the preponderance of the evidence. We reform Finding of Fact No. 4 to conform to the hearing officer’s discussion of the evidence, the evidence in the record, conclusions of law, and decision. Finding of Fact No. 4 is reformed as follows: the

December 1, 2014, date of MMI and nine percent IR is not contrary to the preponderance of the other medical evidence.

SUMMARY

We affirm the hearing officer's determination that the carrier is entitled to reduce the claimant's IIBs to recoup the previous overpayment of \$2,112.86.

We affirm the hearing officer's determination that the claimant reached MMI on December 1, 2014.

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

We affirm Finding of Fact No. 4 as reformed.

The true corporate name of the insurance carrier is **THE PHOENIX INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge