

APPEAL NO. 160394  
FILED MAY 11, 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 (CCH) was held on October 26, 2015, with the record closing on February 1, 2016, in (city), 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 does not extend to mid-thoracic spine spondylosis with stenosis or cord compression, fusion at C3-4 and C4-5, spondylosis at C5-6 and C6-7, left facet arthropathy at C7-T1, moderate spondylosis and bulge at T9-10, disc protrusion 2-3 mm at L4-5 with annular tear, minimal narrowing at L5-S1, and a 3 mm left paracentral disc protrusion at L5-S1; (2) the appellant/cross-respondent (claimant) has not reached maximum medical improvement (MMI) as certified by (Dr. E), a designated doctor; and (3) since the claimant has not reached MMI, she cannot be assessed an impairment rating (IR) at this time.

The claimant appealed the hearing officer's determinations of the extent of the compensable injury, arguing that the hearing officer failed to make a determination on four conditions that were part of the extent-of-injury issue to be resolved at the CCH. The claimant additionally argues that the evidence establishes that all of the conditions in dispute were part of the compensable injury. The respondent/cross-appellant (carrier) responded, urging affirmance of the extent-of-injury determination.

The carrier cross-appealed the determinations of MMI and IR, arguing that the hearing officer's determinations on these issues are not supported by the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

#### DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the carrier has accepted a (date of injury), compensable injury in the nature of a sprain/strain of the neck, mid back, and lower back. The claimant testified that she injured her back while moving a table and caused further injury when retrieving a meeting bag and setting up a projector shortly after moving the table.

#### EXTENT OF INJURY

That portion of the hearing officer's determination that the (date of injury), compensable injury does not extend to mid-thoracic spine spondylosis with stenosis or cord compression, fusion at C3-4 and C4-5, spondylosis at C5-6 and C6-7, left facet arthropathy at C7-T1, moderate spondylosis and bulge and T9-10, disc protrusion 2-3 mm at L4-5 with annular tear, minimal narrowing at L5-S1, and a 3 mm left paracentral disc protrusion at L5-S1 is supported by sufficient evidence and is affirmed.

A pre-hearing conference was held on October 12, 2015, in which it was determined that the following four conditions were to be added to the extent of injury in dispute: lateral recess stenosis at L4-5, lumbar radiculopathy, cervical bulge at C5, and depression. A review of the record of the CCH held on October 26, 2015, reflects that these conditions were part of the extent-of-injury issue to be determined at the CCH. However, the hearing officer failed to add these conditions as part of the disputed extent-of-injury issue in her decision and order and failed to make findings of fact, conclusions of law, or a determination of these conditions. Accordingly, we reverse the hearing officer's decision regarding extent of injury as being incomplete and remand to the hearing officer for further action consistent with this decision and to make a determination of whether the compensable injury of (date of injury), extends to lateral recess stenosis at L4-5, lumbar radiculopathy, cervical bulge at C5, and depression.

### **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 noted that a new designated doctor needed to be appointed after the conclusion of the CCH because the credentials of the first designated doctor

expired preventing him from responding to a letter of clarification. Dr. E was appointed by the Division to address the issues of extent of injury, MMI and IR. Dr. E examined the claimant on December 11, 2015, and opined that for the conditions of neck, mid back, and low back sprains/strains the claimant had not yet reached MMI and anticipated the claimant would reached MMI on March 11, 2016. The parties did not stipulate or litigate the date of statutory MMI.

We have reversed the extent-of-injury determination because it is incomplete and remanded the extent-of-injury issue to the hearing officer for further action consistent with this decision. Accordingly, we also reverse the hearing officer's determinations that the claimant has not reached MMI and since she has not reached MMI, an IR cannot be assessed and remand the issues of MMI and IR to the hearing officer.

### **SUMMARY**

We affirm that portion of the hearing officer's determination that the (date of injury), compensable injury does not extend to mid-thoracic spine spondylosis with stenosis or cord compression, fusion at C3-4 and C4-5, spondylosis at C5-6 and C6-7, left facet arthropathy at C7-T1, moderate spondylosis and bulge and T9-10, disc protrusion 2-3 mm at L4-5 with annular tear, minimal narrowing at L5-S1, and a 3 mm left paracentral disc protrusion at L5-S1.

We reverse the hearing officer's extent-of-injury determination as being incomplete and remand the extent-of-injury issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant has not reached MMI and remand the MMI issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that since the claimant has not reached MMI, an IR cannot be assessed and remand the IR issue 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 request the designated doctor to give an opinion of whether the (date of injury), compensable injury extends to lateral recess stenosis at L4-5, lumbar radiculopathy, cervical bulge at C5, and depression. The hearing officer is to request the designated doctor give an opinion on the claimant's MMI, which can be no later than the statutory date of MMI (Section 401.011(30)), and IR by rating the entire compensable injury in accordance with 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), considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's opinion on the extent of the claimant's injury and new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is to make findings of fact, conclusions of law, and a determination of whether the (date of injury), compensable injury extends to lateral recess stenosis at L4-5, lumbar radiculopathy, cervical bulge at C5, and depression.

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 **CASTLEPOINT NATIONAL 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.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

K. Eugene Kraft  
Appeals Judge

---

Carisa Space-Beam  
Appeals Judge