

APPEAL NO. 160591
FILED MAY 31, 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 March 9, 2016, in Austin, 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), does not extend to cervical stenosis; and (2) the respondent/cross-appellant's (claimant) impairment rating (IR) is 20%.

The appellant/cross-respondent (self-insured) appealed the hearing officer's determination that the claimant's IR is 20% as assessed by (Dr. P) a referral doctor acting in place of the treating doctor, arguing that Dr. P incorrectly interpreted 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). The self-insured additionally argues that the hearing officer erred because she failed to consider whether the 15% IR assigned by the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, (Dr. J), became final pursuant to 28 TEX. ADMIN. CODE § 130.102(h) (Rule 130.102(h)). The claimant responded to the self-insured's appeal urging affirmance of the IR determination, contending that the hearing officer may only decide issues which the parties have properly raised. The claimant cross-appealed disputing the hearing officer's extent-of-injury determination. The self-insured responded, urging affirmance of the extent-of-injury determination.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury; that the date of maximum medical improvement (MMI) is September 4, 2013; and that the claimant is not entitled to supplemental income benefits (SIBs) for the second, third, and fourth quarters. The claimant testified he was injured in a motor vehicle accident.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to cervical stenosis is supported by sufficient evidence and is affirmed.

IR

Rule 130.102(h) provides that if there is no pending dispute regarding the date of MMI or the IR prior to the expiration of the first quarter SIBs, the date of MMI and IR shall be final and binding. Once the IR became final pursuant to Rule 130.102(h), what was included in the underlying compensable injury was established. See Appeals Panel Decision (APD) 040150-s, decided March 8, 2004, and APD 090515, decided June 12, 2009.

In both its opening and closing argument, the self-insured argued that the 15% IR certified from the designated doctor, Dr. J, became final pursuant to Rule 130.102(h) without objection from the claimant. Additionally, the applications for the second, third, and fourth quarters of SIBs were in evidence which reflect that the dates of the quarters and qualifying periods were based on a 15% IR. However, the hearing officer did not add or make findings or a determination of whether an IR became final pursuant to Rule 130.102(h). In evidence are Notifications of [MMI]/First Impairment Income Benefit Payment (PLN-3) dated September 17, 2013, and November 21, 2013, addressed to the claimant, which reflect the self-insured began to pay impairment income benefits based on the impairment assessed by Dr. P and then subsequently the impairment assessed by Dr. J. Under the facts of this case we hold that the issue of whether the IR assessed by Dr. J became final pursuant to Rule 130.102(h) was actually litigated and it was error for the hearing officer to fail to make findings of fact, conclusions of law, and a decision on this issue. Accordingly we reverse the hearing officer's determination that the claimant's IR is 20% and 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), does not extend to cervical stenosis.

We reverse the hearing officer's determination that the claimant's IR is 20% and remand the IR issue to the hearing officer for further action.

REMAND INSTRUCTIONS

On remand the hearing officer is to add the issue of whether the IR assessed by Dr. J became final pursuant to Rule 130.102 because it was actually litigated and make findings of fact, conclusions of law, and a decision on this issue. The hearing officer is then to make a determination of the claimant's IR.

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 **CITY OF AUSTIN (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**LESLIE MILVO
505 BARTON SPRINGS ROAD, SUITE 600
AUSTIN, TEXAS 78704.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge