APPEAL NO. 160636
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 (CCH) was held on December 10, 2015, with the record closing on March 1, 2016, in Houston, 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 inujury), extends to a right shoulder sprain/strain; (2) the date of maximum medical improvement (MMI) is December 22, 2014; and (3) the impairment rating (IR) is 13%.

The appellant (claimant) appealed the hearing officer's MMI and IR determinations. The claimant contends that the hearing officer erroneously ruled that the opinion from (Dr. C), the designated doctor initially appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine extent of injury, MMI, and IR, could not be adopted. The claimant also contends that the hearing officer erred in adopting the MMI/IR certification by (Dr. F), the subsequently-appointed designated doctor to determine MMI and IR. The respondent (carrier) responded, urging affirmance of the hearing officer's MMI and IR determinations.

The hearing officer's determination that the compensable injury of (date of inujury), extends to a right shoulder sprain/strain was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as clarified.

The parties stipulated in part that the claimant sustained a compensable injury on (date of inujury), in the form of electrical burns to the left hand and right foot. The claimant testified that while he was holding a metal chain holding a trackhoe to be delivered, a co-worker lifted the trackhoe arm which came into contact with overhead high power electrical lines and caused the claimant to sustain an electrical shock injury when seventy-thousand bolts of electricity entered his left hand and exited his right foot.

MMI/IR

The hearing officer's determination that the claimant's date of MMI is December 22, 2014, is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the claimant's IR is 13% is supported by sufficient evidence and is affirmed.

Dr. C was initially appointed by the Division to determine the claimant's MMI and IR, and Dr. C examined the claimant for this purpose on August 13, 2013. Dr. C certified the claimant reached MMI on that date with a 12% IR. It is undisputed that Dr. C considered only the burns to the claimant's left hand and right foot.

Dr. C was subsequently appointed to opine on the extent of the claimant's injury. Dr. C examined the claimant on April 29, 2014, and opined that the compensable injury extends to the right shoulder. Dr. C performed an examination of the claimant's shoulder and noted range of motion measurements. As noted above, the hearing officer's determination that the compensable injury extends to a right shoulder sprain/strain was not appealed and has become final pursuant to Section 410.169.

A letter of clarification (LOC) was sent to Dr. C after the December 10, 2015, CCH requesting him to consider and rate the right shoulder sprain/strain. Dr. C responded on December 13, 2015, and amended his certification to state that the claimant reached MMI on May 8, 2014, the date of an MRI of the claimant's right shoulder, with a 17% IR.

The hearing officer stated the following in her Discussion:

> [Dr. C] first examined [the] [c]laimant on August 13, 2013[,] to determine the issues of MMI and IR. He rated the burns only, and certified [the] [c]laimant reached MMI on August 13, 2013[,] with a 12% IR. He re-examined [the] [c]laimant on April 29, 2014, (to determine extent of injury) and determined that the right shoulder injury was part of the compensable injury. [Dr. C] then produced a new report on December 13, 2015, which rated all of the compensable injuries, and certified [the] [c]laimant reached MMI on May 8, 2014[,] with a 17% IR. [Dr. C] changed the MMI date and the IR on the new report without a re-examination of [the] [c]laimant. The new MMI date was also prospective to the last exam date. For these reasons, [Dr. C's] report could not be adopted.

28 TEX. ADMIN. CODE § 130.1(b)(4) (Rule 130.1(b)(4)) provides in part that to certify MMI the certifying doctor shall "perform a complete medical examination of the injured employee for the explicit purpose of determining MMI (certifying examination)." Rule 130.1(c)(3) provides in part that an assignment of IR for the current compensable injury shall be based on the injured employee's condition on the MMI date considering the medical record and the certifying examination. The Appeals Panel has held that an amended certification of MMI/IR done without a medical examination is a violation of

Rules 130.1(b)(4)(B) and 130.1(c)(3), which require the certifying doctor to perform a complete medical examination of the injured employee for the explicit purpose of determining MMI/IR. Appeals Panel Decision (APD) 130187, decided March 18, 2013; *see also* APD 100152, decided April 8, 2010.

Dr. C first examined the claimant to determine MMI and IR on August 13, 2013. Dr. C next examined the claimant on April 29, 2014, solely for extent of injury. In response to the LOC sent after the CCH, Dr. C amended his MMI/IR certification on December 13, 2015, to state the claimant reached MMI on May 8, 2014, with a 17% IR, without physically re-examining the claimant. Although Dr. C examined the claimant's right shoulder on April 29, 2014, this examination was for the specific purpose to determine the extent of the claimant's compensable injury, and not MMI and IR. In this case the hearing officer is correct in stating Dr. C's report could not be adopted because he amended MMI and IR without a physical re-examination.

The hearing officer also stated that Dr. C's report could not be adopted because his date of MMI was prospective to the last exam date. A date of MMI becomes prospective if it is projected to occur at some time after the certification of MMI is made. The Appeals Panel has stated that "[t]he key consideration is that the date of MMI was not after the date of certification, that is, signature of the certifying doctor, on the [Report of Medical Evaluation (DWC-69)]." *See* APD 100636-s, decided July 16, 2010; APD 100766, decided August 16, 2010.

Dr. C noted on his December 13, 2015, DWC-69 an April 29, 2014, date of examination, which as noted above was for extent of injury, and certified the claimant reached MMI on May 8, 2014. Dr. C signed the DWC-69 on December 13, 2015. Dr. C's amended May 8, 2014, date of MMI is not after his December 13, 2015, MMI/IR certification; therefore, his December 13, 2015, MMI/IR certification does not contain a prospective date of MMI. The hearing officer erred in stating Dr. C's December 13, 2015, MMI/IR certification could not be adopted because it contained a prospective date of MMI.

A written decision is issued in this case to clarify that although Dr. C's December 13, 2015, MMI/IR certification could not be adopted because he amended the date of MMI and IR without a physical re-examination, the hearing officer erred in finding that Dr. C's December 13, 2015, MMI/IR certification contained a prospective date of MMI.

SUMMARY

We affirm the hearing officer's determination that the claimant's date of MMI is December 22, 2014.

We affirm the hearing officer's determination that the claimant's IR is 13%

The true corporate name of the insurance carrier is **GREAT MIDWEST 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.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge