

APPEAL NO. 160840  
FILED JULY 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 April 30, 2015, and August 13, 2015, with the record closing on April 6, 2016, in San Antonio, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury does not extend to a C6-7 disc bulge with disc extrusion, aggravation of the cervical spondylotic degenerative changes, aggravation of the lumbar spondylotic degenerative changes, aggravation of the L3-4 facet arthrosis, and aggravation of the L4-5 facet hypertrophy; (2) the respondent/cross-appellant (claimant) reached maximum medical improvement (MMI) on September 11, 2014; and (3) the claimant's impairment rating (IR) is zero percent.

The appellant/cross-respondent (carrier) appealed, arguing that the hearing officer erred by failing to determine whether the compensable injury of (date of injury), extends to a C5-6 disc bulge or L4-5 posterior disc bulging. The claimant responded, agreeing that the hearing officer failed to make a determination of whether the compensable injury of (date of injury), extends to a C5-6 disc bulge or L4-5 posterior disc bulging. The claimant cross-appealed disputing the hearing officer's determinations that the compensable injury does not extend to a C6-7 disc bulge with disc extrusion, aggravation of the cervical spondylotic degenerative changes, aggravation of the lumbar spondylotic degenerative changes, aggravation of the L3-4 facet arthrosis, and aggravation of the L4-5 facet hypertrophy; that the claimant reached MMI on September 11, 2014; and that the claimant's IR is zero percent. The carrier responded, urging affirmance of the determinations of extent of injury, MMI, and IR made by the hearing officer.

DECISION

Affirmed in part as reformed and reversed and remanded in part.

The parties stipulated, in part, that the required medical examination post-designated doctor, (Dr. H) determined that the claimant reached MMI on February 15, 2014, with an IR of five percent. However, the hearing officer mistakenly referenced the date Dr. H determined the claimant reached MMI as July 8, 2014, which was the date of the certification. We reform stipulation 1.G. to reflect the date Dr. H determined the claimant reached MMI as February 15, 2014, to conform to the actual stipulation of the parties and the evidence.

The claimant testified he was injured when he slipped and fell down some stairs while at work on (date of injury). The parties stipulated that on (date of injury), the claimant sustained a compensable injury in the form of a left ankle contusion, a left ankle sprain, a lumbar sprain, and a cervical sprain.

### **EXTENT OF INJURY**

That portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to C6-7 disc bulge with disc extrusion, aggravation of the cervical spondylotic degenerative changes, aggravation of the lumbar spondylotic degenerative changes, aggravation of the L3-4 facet arthrosis, and aggravation of the L4-5 facet hypertrophy is supported by sufficient evidence and is affirmed.

The extent-of-injury issue reported in the Benefit Review Conference Report in evidence listed a C5-6 disc bulge and L4-5 posterior disc bulging as part of the extent-of-injury conditions to be determined at the CCH. The parties agreed at the CCH that the conditions of C5-6 disc bulge and L4-5 posterior disc bulging were part of the extent-of-injury issue to be determined at the CCH. As previously noted both the carrier and the claimant on appeal agree that the hearing officer erred in failing to resolve whether the compensable injury of (date of injury), extends to a C5-6 disc bulge and L4-5 posterior disc bulging. Accordingly, we reverse the hearing officer's extent-of-injury determination as incomplete and remand that portion of the extent-of-injury issue of whether the compensable injury of (date of injury), extends to a C5-6 disc bulge and L4-5 posterior disc bulging to the hearing officer for further action consistent with this decision.

### **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 determined that the claimant reached MMI on September 11, 2014, and that the claimant's IR is zero percent. However, given that we have reversed the hearing officer's extent-of-injury determination as being incomplete because he failed to determine whether the compensable injury of (date of injury), extends to a C5-6 disc bulge and L4-5 posterior disc bulging, we reverse the hearing officer's determinations that the claimant reached MMI on September 11, 2014, and that the claimant's IR is zero percent and remand the MMI and IR issues to the hearing officer for further action consistent with this decision.

### **SUMMARY**

We reform stipulation 1.G. as follows: The required medical examination post-designated doctor, Dr. H determined that the claimant reached MMI on February 15, 2014, with an IR of five percent.

We affirm that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to C6-7 disc bulge with disc extrusion, aggravation of the cervical spondylotic degenerative changes, aggravation of the lumbar spondylotic degenerative changes, aggravation of the L3-4 facet arthrosis, and aggravation of the L4-5 facet hypertrophy.

We reverse the hearing officer's extent-of-injury determination as being incomplete and remand the issue of whether the compensable injury of (date of injury), extends to a C5-6 disc bulge and L4-5 posterior disc bulging to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant reached MMI on September 11, 2014, and remand the issue of MMI to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant's IR is zero percent and remand the issue of IR to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the hearing officer is to make a determination of whether the compensable injury of (date of injury), extends to a C5-6 disc bulge and L4-5 posterior disc bulging. After making a determination of whether the compensable injury of (date

of injury), extends to a C5-6 disc bulge and L4-5 posterior disc bulging, the hearing officer is then to make a determination of MMI and IR that considers the entire compensable injury.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge