APPEAL NO. 160876
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 6, 2016, in Fort Worth, 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), extends to right carpal tunnel syndrome (CTS), right median neuropathy, right ulnar neuropathy, right ulnar entrapment, and right cubital tunnel syndrome; (2) the date of maximum medical improvement (MMI) is June 20, 2015; (3) the appellant's (claimant) impairment rating (IR) is 7%; and (4) the first certification of MMI and assigned IR from (Dr. A) on June 23, 2015, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12). We note that the decision and order section, the issue statement, Conclusion of Law No. 6, and the decision incorrectly identify the date of Dr. A's MMI/IR certification as June 23, 2014.

The claimant appeals the hearing officer's IR determination, contending that the hearing officer should have adopted the IR from (Dr. Z), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address MMI, IR, and extent of injury. The respondent (carrier) responded, urging affirmance of the hearing officer's IR determination.

The hearing officer's determinations that: (1) the compensable injury of (date of injury), extends to right CTS, right median neuropathy, right ulnar neuropathy, right ulnar entrapment, and right cubital tunnel syndrome; (2) the date of MMI is June 20, 2015; and (3) the first certification of MMI and assigned IR from Dr. A on June 23, 2015, did not become final under Section 408.123 and Rule 130.12 were not appealed and have become final pursuant to Section 410.169.

DECISION

Reformed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), and that the accepted compensable injury is a right elbow strain and right wrist strain. The claimant testified he was injured when he fell off an unsecured ladder on the upper portion of a roof.

At the CCH the carrier offered Carrier's Exhibits A through V, and those exhibits were admitted. However, the decision incorrectly identifies Carrier's Exhibits A through

U as being admitted. We reform the decision to state Carrier's Exhibits A through V were admitted to reflect the correct exhibits admitted at the CCH.

As noted above, the decision and order section, issue statement, Conclusion of Law No. 6, and the decision incorrectly identify the date of Dr. A's MMI/IR certification as June 23, 2014. We reform all references of June 23, 2014, to the correct date of June 23, 2015.

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 the other doctors.

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's IR is 7% as certified by (Dr. F), a referral doctor acting in place of the treating doctor. Dr. F examined the claimant on August 13, 2015, and certified that the claimant reached MMI on June 20, 2015, with a 7% IR, 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) (AMA Guides). Dr. F found 30° of flexion of the right wrist resulting in 5% upper extremity (UE) impairment using Figure 26 on page 3/36 of the AMA Guides, and 35° of extension which he rounded up to 40° for 4% UE impairment using Figure 26. However, Dr. F incorrectly applied Figure 29 on page 3/38 of the AMA Guides in assessing impairment for radial deviation. Dr. F found 15° of radial deviation for which he assigned 1% UE impairment, and 20° ulnar deviation for 2% UE impairment. Figure 29 uses increments of 5°, whereas the general directions on page 3/37 state to round the measurements of radial deviation to the nearest 10°. This conflict is resolved by looking to the general directions of interpolating, measuring, and rounding off which are found on page 2/9 of the AMA Guides and which provide as follows in relevant part:

> In general, an impairment value that falls between those appearing in a table or figure of the *Guides* may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions.

Here the AMA Guides do give other directions than applying the values given in Figure 29 on page 3/38. Those directions are on page 3/37 and provide that the measurements be rounded to the nearest 10°. Using the language cited above from page 2/9 of the AMA Guides, these directions control over Figure 29 and should have been applied in calculating the claimant's IR. *See* Appeals Panel Decision (APD) 022504-s, decided November 12, 2002; APD 111384, decided November 23, 2011. *See also* APD 131541, decided August 29, 2013.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. *See* APD 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. However, in the case on appeal, Dr. F's 7% IR cannot be corrected. Dr. F failed to round the measurements of radial deviation of the wrist to the nearest 10° to determine the UE impairment. Rounding radial deviation to derive the correct UE impairment requires medical judgment or discretion, so we cannot recalculate the correct IR using Dr. F's figures. Dr. F's 7% IR cannot be adopted.

There are several other IRs in evidence. However, the hearing officer's determination that the claimant reached MMI on June 20, 2015, was not appealed and has become final pursuant to Section 410.169. There are only two MMI/IR certifications in evidence that certify the claimant reached MMI on June 20, 2015.

The first MMI/IR certification certifying the claimant reached MMI on June 20, 2015, is from Dr. Z, the designated doctor. Dr. Z examined the claimant on December 8, 2015, and assigned a 17% IR. Dr. Z assigned 14% UE impairment based on loss of range of motion (ROM) of the claimant's right wrist. Dr. Z also assigned 4% UE impairment for sensory deficit of the ulnar nerve by multiplying 60% sensory deficit of the ulnar nerve and 7% maximum UE impairment due to sensory deficit or pain. Dr. Z additionally assigned 12% UE impairment for sensory deficit of the median nerve without the thumb by multiplying 60% sensory deficit of the median nerve without the thumb and 20% UE impairment due to sensory deficit or pain. Dr. Z combined the 4% UE impairment for the ulnar nerve with 12% UE impairment for the median nerve for a combined 16% UE impairment. Dr. Z then combined 16% UE impairment for the ulnar nerve and median nerve with 14% UE impairment for loss of ROM of the claimant's right wrist for a total 28% UE impairment, which using Table 3 on page 3/20 converts to 17% whole person impairment (WPI).

We note that the AMA Guides provide the following on page 3/46:

> To evaluate impairment resulting from the effects of peripheral nerve lesions, it is necessary to determine the extent of loss of function due to (1) sensory deficits or pain (Table 11 [page 3/48]); and (2) motor deficits (Table 12 [page 3/49]). Characteristic deformities and manifestations resulting from peripheral nerve lesions, such as restricted motion, atrophy, and vasomotor, trophic, and reflex changes, have been taken into consideration in preparing the estimated impairment percents shown in this section.
>
> *If an impairment results strictly from a peripheral nerve lesion, the physician should not apply impairment percents from Sections 3.1f through 3.1j ([pages 3/24 through 3/45]) of this chapter [Figures 26 and 29 included], and this Section [3.1k Impairment of the (UE) Due to Peripheral Nerve Disorders (Table 16 included)], because a duplication and an unwarranted increase in the impairment percent would result.*
>
> If restricted motion cannot be attributed to a peripheral nerve lesion, the motion impairment should be evaluated according to Sections 3.1f through 3.1j and the nerve impairment according to this Section [3.1k]. Then the motion impairment percent should be *combined* (Combined Values Chart [page 322]) with the peripheral nerve system impairment percent.

In APD 043155, decided January 28, 2005, the disputed issue was the IR. The certifying doctor, a designated doctor, calculated the impairment for the wrist by combining a UE impairment for loss of motion with UE impairment for mild median nerve entrapment neuropathy under Table 16, page 3/57 of the AMA Guides. The hearing officer adopted the assigned IR from the designated doctor. The Appeals Panel reversed the hearing officer's IR determination and remanded the IR issue because:

> Although the records indicate that the designated doctor based his assessment of impairment for the right wrist solely on the diagnosis of [CTS], the designated doctor assessed impairment for abnormal motion of the right wrist under Section 3.1h [abnormal ROM for the wrist] and then combined that rating with impairment he assessed for the right wrist under Table 16 [UE Impairment Due to Entrapment Neuropathy] based on mild impairment of the median nerve of the wrist. Clarification should be sought from the designated doctor to determine whether or not the impairment for the right wrist results strictly from a peripheral nerve lesion.

The Appeals Panel remanded the case for the hearing officer to seek clarification from the designated doctor and request the designated doctor provide an IR report that is in compliance with the AMA Guides. APD 043155, *supra*, was followed in APD 111965, decided February 24, 2012, which held that loss of ROM and peripheral nerve involvement cannot be combined to obtain a rating for CTS without a distinct lesion of some sort causing the ROM loss, separate from the nerve involvement. *See also* APD 130342, decided April 3, 2013; APD 141129, decided July 29, 2014.

In the case on appeal, Dr. Z did not state whether or not the claimant's impairment results strictly from a peripheral nerve lesion. Dr. Z combined UE impairment based on ROM deficit of the claimant's right wrist with sensory deficits in the claimant's ulnar and median nerves. The AMA Guides, as discussed above, provide that if impairment results strictly from a peripheral nerve lesion, the certifying doctor should not combine ROM deficit with Section 3.1k, Impairment of the UE Due to Peripheral Nerve Disorders, which includes impairment for sensory deficit. Dr. Z's 17% IR cannot be adopted.

We note that the hearing officer states in his decision that "[Dr. Z] provided an alternate [MMI/IR] certification that rated the entire compensable injury" that could not be adopted because he "assessed an [UE IR] of 16% for the wrist sprain/strain based solely on [ROM] measurements." The only certification in evidence from Dr. Z is the MMI/IR certification assigning 17% IR discussed above, which included 14% impairment for loss of ROM.

The second MMI/IR certification in evidence that certifies the claimant reached MMI on June 20, 2015, is from (Dr. S), the post-designated doctor required medical examination doctor. Dr. S examined the claimant on March 3, 2016, and assigned a 7% IR. Dr. S assigned 2% UE impairment for loss of ROM of the claimant's right wrist, and 6% UE impairment for loss of ROM of the right elbow. Dr. S also assigned 4% UE impairment for sensory deficit of the ulnar nerve by multiplying 60% sensory deficit of the ulnar nerve and 7% maximum UE impairment due to sensory deficit or pain. Dr. S found no sensory loss of the median nerve or "CTS" region. Dr. S combined these impairments for a 12% UE impairment, which converts to 7% WPI using Table 3 on page 3/20. Dr. S's 7% IR cannot be adopted for the same reason Dr. Z's 17% IR cannot be adopted; Dr. S combined UE impairment based on ROM deficit of the claimant's right wrist and elbow with sensory deficits in the claimant's ulnar nerve, but did not state whether or not the claimant's impairment results strictly from a peripheral nerve lesion.

Neither of the MMI/IR certifications in evidence with the unappealed MMI date of June 20, 2015, assigning a 7% IR can be adopted. Accordingly, we reverse the hearing

officer's determination that the claimant's IR is 7%. As there is no IR in evidence that can be adopted, we remand the issue of the claimant's IR to the hearing officer for further action consistent with this decision.

SUMMARY

We reform the decision to state that Carrier's Exhibits A through V were admitted to reflect the correct carrier exhibits admitted at the CCH.

We reform all references of June 23, 2014, to the correct date of June 23, 2015.

We reverse the hearing officer's determination that the claimant's IR is 7%, and we remand the issue of the claimant's IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. Z is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. Z is still qualified and available to be the designated doctor.

The hearing officer is to advise the designated doctor that the compensable injury of (date of injury), extends to a right elbow strain, right wrist strain, right CTS, right median neuropathy, right ulnar neuropathy, right ulnar entrapment, and right cubital tunnel syndrome. The hearing officer is also to advise the designated doctor that the date of MMI is June 20, 2015.

The hearing officer is to request the designated doctor to rate the entire compensable injury based on the claimant's condition as of the June 20, 2015, date of MMI based on the claimant's medical record and certifying examination.

The hearing officer is to advise the designated doctor to comply with Rule 130.1(c)(3) and the AMA Guides. The designated doctor, if s/he chooses to combine ROM and peripheral nerve involvement, is to clarify whether the assigned impairment for the wrist and/or elbow results strictly from a peripheral nerve lesion or if the restricted motion cannot be attributed to a peripheral nerve lesion. The doctor is also to round ROM figures as required by the AMA Guides.

The parties are to be provided correspondence to the designated doctor, the designated doctor's response and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the 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* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier **is ZURICH AMERICAN 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