APPEAL NO. 100425
FILED JUNE 11, 2010

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 October 29, 2009, and concluded on March 16, 2010. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury does not extend to a partial tear of the anterior cruciate ligament (ACL) of the right knee, nor does it extend to a full tear of the medial collateral ligament (MCL); (2) the respondent (claimant) reached maximum medical improvement (MMI) on February 6, 2009; and (3) the claimant's impairment rating (IR) is zero percent. The appellant (carrier) appeals the hearing officer's determination of the MMI date, contending that the date of MMI actually determined by the designated doctor was November 7, 2008. The appeal file does not contain a response from the claimant. The hearing officer's determination that the compensable injury does not extend to a partial tear of the ACL of the right knee, nor does it extend to a full tear of the MCL was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. The hearing officer found that "[t]he preponderance of the evidence is not contrary to the designated doctor's determination that [the] [c]laimant reached MMI on February 6, 2009, with a zero percent [IR]." The carrier contends in its appeal that the hearing officer clearly intended to adopt the certification of the designated doctor but erroneously found the designated doctor certified that the claimant reached MMI on February 6, 2009.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (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 record indicates that the designated doctor examined the claimant on February 6, 2009, but certified that the claimant reached MMI on November 7, 2008, with a zero percent IR. No other certification of MMI/IR was in evidence. The hearing officer mistakenly found that the designated doctor certified that the claimant reached

MMI on February 6, 2009, rather than the actual date he certified that the claimant reached MMI, November 7, 2008, as reflected on the Report of Medical Evaluation (DWC-69) and the designated doctor's narrative report in evidence. Consequently, the hearing officer's determination that the claimant reached MMI on February 6, 2009, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the claimant reached MMI on February 6, 2009, and render a new decision that the claimant reached MMI on November 7, 2008. We affirm the hearing officer's determination that the claimant's IR is zero percent.

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

MR. RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge