APPEAL NO. 100483
FILED JUNE 9, 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 (CCH) was held on March 24, 2010. The hearing officer resolved the disputed issues by deciding that: (1) as a result of the compensable injury sustained on _____, the respondent (claimant) sustained disability from April 8, 2009, through January 22, 2010; (2) the claimant reached maximum medical improvement (MMI) on January 22, 2010; (3) the claimant's impairment rating (IR) is 16%; and (4) the first certification of MMI and IR assigned by (Dr. G) on April 7, 2009, did not become final under Section 408.123.

The appellant (carrier) appealed, disputing the hearing officer's determinations on the issues of disability, MMI, IR, and finality of the first certification of MMI and assigned IR by Dr. G on April 7, 2009. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) the claimant sustained a compensable injury on _____; (2) Dr. G's certification of MMI and assigned IR was provided to the claimant by verifiable means on April 15, 2009; and (3) the claimant's compensable injury does not extend to include the lumbar spine.[1] The claimant testified that she sustained an injury to her right knee in the course and scope of her employment and underwent two arthroscopic surgeries to her right knee. It was undisputed that the claimant did not dispute the certification from Dr. G before the 91st day of its receipt by verifiable means. The claimant argued at the CCH that the certification did not become final because it was not valid.

FIRST VALID CERTIFICATION OF MMI AND/OR ASSIGNMENT OF IR

Section 408.123(e) provides that except as otherwise provided by this section, an employee's first valid certification of MMI and the first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. 28 TEX. ADMIN. CODE § 130.12(b) (Rule 130.12(b)) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means and that the notice must contain a copy of a

[1] We note that the hearing officer mistakenly recited that the parties stipulated that venue is proper in the (City A) field office of the Texas Department of Insurance, Division of Workers' Compensation (Division). A review of the record reflects the parties actually stipulated that venue is proper in the (City B) field office of the Division, where the CCH was actually held.

valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c). Rule 130.12(c) provides, in part, that a certification of MMI and/or IR assigned as described in subsection (a) must be on a [DWC-69]. The certification on the [DWC-69] is valid if: (1) there is an MMI date that is not prospective; (2) there is an impairment determination of either no impairment or a percentage [IR] assigned and; (3) there is the signature of the certifying doctor who is authorized by the [Division] under Rule 130.1(a) to make the assigned impairment determination.

Dr. G, the claimant's surgeon, chosen by the treating doctor to act in place of the treating doctor to certify MMI and assign IR, examined the claimant on April 2, 2009, and indicated on his medical report dated that same date, "[the claimant] continues to have problems in her right leg. The request for her SI injection has been denied. Consequently, we will place her at MMI with evaluation of her knee and hip . . ." In evidence were records dated April 7, 2009, which contained range of motion (ROM) measurements for the claimant's right lower extremity, resulting in a 10% IR. In a DWC-69 dated April 7, 2009, Dr. G certified that the claimant reached MMI on April 7, 2009, with a 10% IR.

In the Background Information of her decision and order, the hearing officer stated that "there is no record of a physical examination being performed by Dr. [G] on April 7, 2009, for the purpose of determining [MMI] and [IR]. There is also no narrative report included with the DWC-69 form." The hearing officer further stated in the Background Information that "[i]f the April 2, 2009, examination was a certifying examination, then the [MMI] date of April 7, 2009, would be a prospective date." The hearing officer found that Dr. G's assigned IR was not a valid rating.

The claimant's ROM measurements were taken on April 7, 2009, by a physical therapist. *See* Rule 130.1(c)(4). Dr. G noted in his report of April 2, 2009, that the claimant would be placed at MMI with evaluation of her hip and knee, which the record reflects was performed on April 7, 2009. 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. Dr. G completed the DWC-69 on April 7, 2009, and based the claimant's IR on ROM measurements performed on April 7, 2009. The hearing officer's finding that Dr. G's assigned IR was not a valid rating is incorrect. Rule 130.12(c) provides that the DWC-69 is valid if there is an MMI date that is not prospective; there is an impairment determination of either no impairment or a percentage IR assigned; and there is the signature of the certifying doctor who is authorized by the Division under Rule 130.1(a) to make the assigned impairment determination. We note Rule 130.12(c) does not require a narrative report to be a valid certification. The MMI date certified by Dr. G was not prospective but rather based on the April 7, 2009, date ROM measurements were taken. The DWC-69 was signed and a percentage IR was assigned. The hearing officer's determination that Dr. G's assigned impairment was not a valid rating is so against the great weight as to be clearly wrong and manifestly unjust.

Accordingly, we reverse the hearing officer's decision that the first certification of MMI and IR assigned by Dr. G on April 7, 2009, did not become final under Section 408.123 and we render a new decision that the first certification of MMI and IR assigned by Dr. G on April 7, 2009, became final under Section 408.123.

MMI AND IR

Given that we have reversed the hearing officer's decision that the first certification of MMI and IR assigned by Dr. G did not become final and rendered a new decision that it became final pursuant to Section 408.123, we reverse the hearing officer's determinations of MMI and IR. The hearing officer determined that the claimant's MMI date was January 22, 2010, and that the claimant's IR was 16% as certified by the Division-appointed designated doctor.

We reverse the hearing officer's decision that the claimant reached MMI on January 22, 2010, and render a new decision that the claimant reached MMI on April 7, 2009.

We reverse the hearing officer's decision that the claimant's IR is 16% and render a new decision that the claimant's IR is 10%.

DISABILITY

The hearing officer's decision that as a result of the compensable injury sustained on _____, the claimant sustained disability from April 8, 2009, through January 22, 2010, is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's decision that as a result of the compensable injury sustained on _____, the claimant sustained disability from April 8, 2009, through January 22, 2010.

We reverse the hearing officer's decision that the first certification of MMI and IR assigned by Dr. G on April 7, 2009, did not become final under Section 408.123 and render a new decision that the first certification of MMI and IR assigned by Dr. G on April 7, 2009, did become final under Section 408.123.

We reverse the hearing officer's decision that the claimant reached MMI on January 22, 2010, and render a new decision that the claimant reached MMI on April 7, 2009.

We reverse the hearing officer's decision that the claimant's IR is 16% and render a new decision that the claimant's IR is 10%.

The true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

CORPORATION SERVICES COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge