APPEAL NO. 100661
FILED JULY 16, 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 April 29, 2010. The hearing officer resolved the disputed issues in (Docket No. 1) by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on November 17, 2008; (2) the claimant's impairment rating (IR) is five percent; and (3) the claimant had disability resulting from an injury sustained on _____, from September 24, 2008, through August 4, 2009. The hearing officer resolved the disputed issue in (Docket No. 2) by deciding that the compensable injury of _____, extends to lumbar radiculopathy. The claimant appealed the hearing officer's determination of the MMI date and IR in Docket No. 1. The claimant notes in his appeal that there was no certification in evidence with the date of MMI determined by the hearing officer. The respondent (carrier) responded, urging affirmance of the disputed determinations and acknowledged that the hearing officer mistakenly found the date of MMI to be the date of the examination by the designated doctor rather than the date of MMI certified by the designated doctor. The hearing officer's determinations that the claimant sustained disability from September 24, 2008, through August 4, 2009 (Docket No. 1), and that the compensable injury extends to lumbar radiculopathy (Docket No. 2), were not appealed and have 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 _____, and that (Dr. S) is the properly appointed designated doctor for the issues of MMI and IR. The hearing officer found that "Dr. [S] found [c]laimant to be at [MMI] on November 17, 2008, with an [IR] of five percent" and that "Dr. [S'] assigned [IR] and MMI date are supported by a preponderance of the evidence." Both parties point out in appeal that there is no certification in evidence with an MMI date of November 17, 2008, and that November 17, 2008, is the date Dr. S examined the claimant and is not the date he certified the claimant reached MMI. The hearing officer determined that the preponderance of the other medical evidence is not contrary to the certification of Dr. S, the designated doctor. That determination is supported by the evidence.

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 record indicates that the designated doctor examined the claimant on November 17, 2008, but certified that the claimant reached MMI on September 24, 2008, with a five percent IR. The hearing officer mistakenly found that the designated doctor certified that the claimant reached MMI on November 17, 2008. The designated doctor actually certified that the claimant reached MMI, September 24, 2008, as reflected on the Report of Medical Evaluation (DWC-69) and the designated doctor's narrative report in evidence as well as his responses to letters of clarification. Consequently, the hearing officer's determination that the claimant reached MMI on November 17, 2008, 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 November 17, 2008, and render a new decision that the claimant reached MMI on September 24, 2008. We affirm the hearing officer's determination that the claimant's IR is five percent.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge