APPEAL NO. 100926
FILED SEPTEMBER 2, 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 June 16, 2010. The hearing officer determined that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on October 3, 2009; (2) the claimant's impairment rating (IR) is 0%; and (3) the claimant did not have disability resulting from the compensable injury of _____, from December 18, 2009, through the date of the CCH. The claimant appeals all three of the hearing officer's determinations. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that he worked as a plumber for the employer, and on the date of injury he was in a crawl space when a rat jumped on his left arm. The claimant slung his arm back and hit his left elbow and wrist against a pipe.

(Dr. Ms), the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, examined the claimant on October 3, 2009. Dr. Ms determined that the claimant had not yet reached MMI and recommended a multi-disciplinary pain management program with psychological support and re-exploration of the ulnar nerve and/or control of neuroma. Dr. Ms next examined the claimant on February 20, 2010, and again found that the claimant had not reached MMI but was expected to do so on or about April 15, 2010. Dr. Ms's final examination occurred on April 14, 2010. Dr. Ms certified that the claimant reached MMI on October 3, 2009, and assigned a 0% IR.

On May 14, 2010, the parties signed a Benefit Dispute Agreement (DWC-24) stating the compensable injury of _____, includes "complex regional pain syndrome II [CRPS II] (RSD/CRPS II)."

DISABILITY

The hearing officer's determination that the claimant did not have disability from December 18, 2009, through the date of the CCH is supported by sufficient evidence and is affirmed.

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 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. *See* Appeals Panel Decision (APD) 040313-s, decided April 5, 2004.

As previously noted, the parties signed an agreement on May 14, 2010, almost a month after Dr. Ms's MMI/IR certification, that the compensable injury includes CRPS II. Although Dr. Ms's narrative reflects a diagnosis of CRPS II secondary to ulnar neuropathy, Dr. Ms did not provide a rating for CRPS II. Because the designated doctor did not rate the entire compensable injury, his report that the claimant reached MMI on October 3, 2009, with a 0% IR cannot be adopted. *See* APD 080380, decided May 8, 2008. Therefore, we reverse the hearing officer's determination that the claimant reached MMI on October 3, 2009, with a 0% IR.

The only other certification of MMI/IR in evidence is the certification from (Dr. M), the doctor selected to act in the place of the treating doctor. Dr. M certified that the claimant reached MMI on August 10, 2009, and assigned a 14% IR based on "measurements of his compensable wrist/elbow . . . by the peripheral nerve standards . . . ." Dr. M did not discuss or rate CRPS II. Dr. M's MMI/IR certification does not rate the entire compensable injury and as such cannot be adopted.

Because there is no MMI/IR certification in evidence that can be adopted, we reverse the hearing officer's determination that the claimant reached MMI on October 3, 2009, with a 0% IR, and remand this case to the hearing officer to make a determination on the issues of MMI and IR.

REMAND INSTRUCTIONS

Dr. Ms is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. Ms is still qualified and available to be the designated doctor, and if so, the hearing officer is to advise the designated doctor that the compensable injury includes CRPS II. The designated doctor is then to be requested to give an opinion on MMI and IR of the entire compensable injury. If Dr. Ms is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Rule 126.7(h) to determine MMI and IR for the compensable

injury. The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and allowed an opportunity to respond.

SUMMARY

We affirm the hearing officer's determination that the claimant did not have disability from December 18, 2009, through the date of the CCH.

We reverse the hearing officer's determinations that the claimant reached MMI on October 3, 2009, and that the claimant's IR is 0%, and remand this case back to the hearing officer.

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Carisa Space-Beam
Appeals Judge

CONCUR:

_____
Cynthia A. Brown
Appeals Judge

_____

Thomas A. Knapp
Appeals Judge