

APPEAL NO. 101952
FILED FEBRUARY 28, 2011

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 November 30, 2010. The hearing officer determined that: (1) the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by (Dr. F) on January 25, 2010, did become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (2) the date of MMI is December 22, 2010;¹ and (3) the respondent's (claimant) IR is 23%. The appellant (carrier) appeals the hearing officer's determinations, contending that neither Dr. F's MMI/IR certification dated January 25, 2010, nor his amended MMI/IR certification dated March 23, 2010, contain a valid date of MMI. The carrier also contends that there is compelling medical evidence of a significant error by Dr. F in applying the appropriate American Medical Association guidelines, which is an exception to finality under Section 408.123(f)(1)(A). The claimant responds, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: on _____, the claimant sustained a compensable injury to his lumbar spine; on January 25, 2010, the claimant's treating doctor, Dr. F, determined that the claimant reached MMI on January 25, 2010; Dr. F assigned the claimant a 23% IR on January 25, 2010; on March 23, 2010, Dr. F amended his January 25, 2010, report with no change to the assigned IR; and on March 23, 2010, Dr. F amended his January 25, 2010, report to change the MMI date to December 22, 2010. It is undisputed that Dr. F's certification of MMI and IR dated January 25, 2010, is the first certification of MMI and IR and that the carrier did not dispute this certification within 90 days after receipt of written notice of the certification by verifiable means.

Dr. F examined the claimant on January 25, 2010, and determined the claimant reached clinical MMI on that date and assigned a 23% 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's 23% IR is based on 10% for the lumbar spine injury under the Diagnosis-Related Estimate Category III: Radiculopathy; 10% for anxiety and depression (page 14/301 of the AMA Guides); and 5% for urinary incontinence (page 11/254 of the AMA Guides). On March 23, 2010, Dr. F amended his Report of Medical Evaluation (DWC-69) to change the date of clinical MMI from January

¹ We note that the hearing officer stated that the MMI date is December 22, 2010, in both the conclusions of law and decision portion of the decision and order, where elsewhere the hearing officer stated the MMI date is December 22, 2009.

25, 2010, to the date of statutory MMI, December 22, 2009. Dr. F retained his previous 23% IR assignment.

FINALITY

The hearing officer's determination that the first (valid)² certification of MMI/IR assigned by Dr. F on January 25, 2010, did become final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed. See Appeals Panel Decision 100636-s, decided July 16, 2010.

MMI/IR

Although the hearing officer determined the first certification of MMI/IR assigned by Dr. F on January 25, 2010, did become final under Section 408.123 and Rule 130.12, the hearing officer determined that the claimant's MMI date is December 22, 2010, and that the claimant's IR is 23% per Dr. F's amended certification. However, given that we have affirmed the hearing officer's determination that Dr. F's first certification of January 25, 2010, became final under Section 408.123 and Rule 130.12, we reverse the hearing officer's determination that the date of MMI is December 22, 2010, and render a new decision that the date of MMI is January 25, 2010. We affirm the hearing officer's determination that the claimant's IR is 23%.

SUMMARY

We affirm the hearing officer's determination that the first certification of MMI/IR assigned by Dr. F on January 25, 2010, did become final under Section 408.123 and Rule 130.12.

We reverse the hearing officer's determination that the date of MMI is December 22, 2010, and render a new decision that the date of MMI is January 25, 2010.

We affirm the hearing officer's determination that the claimant's IR is 23%.

² We note that the hearing officer's conclusions of law and decision do not specifically state Dr. F's first certification of MMI/IR is a valid certification; however, the evidence established that Dr. F's first certification of MMI/IR issued on January 25, 2010, was a valid certification.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY 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 78701-3232.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge