APPEAL NO. 111775
FILED FEBRUARY 13, 2012

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 October 26, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer determined that: the appellant/cross-respondent's (claimant) compensable injury of [date of injury], includes complex regional pain syndrome (CRPS); the claimant reached maximum medical improvement (MMI) on April 5, 2010; and the claimant has an 8% impairment rating (IR).

The claimant appealed the hearing officer's MMI and IR determinations, contending that the designated doctor's certification of MMI and IR should have been adopted. The respondent/cross-appellant (carrier) responded to the claimant's appeal and in a cross-appeal disputed the extent-of-injury determination. The appeal files does not contain a response to the carrier's cross-appeal.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

The claimant, a refinery worker, testified that on her way out of the restroom she tripped, fell forward and fractured her right wrist while at work on [date of injury]. The hearing officer, in an unappealed finding, found that the claimant sustained an injury in the course and scope of her employment on [date of injury]. In another unappealed finding, the hearing officer found that Dr. Krajka-Radcliffe (Dr. R) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to give an opinion on the issues of extent of injury, MMI and IR. There are two certifications of MMI and IR in evidence. The hearing officer adopted the certification of MMI and IR by [Dr. E], a post-designated doctor required medical examination (RME) doctor.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury includes CRPS based on the designated doctor's opinion is supported by sufficient evidence and is affirmed.

MMI

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

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. *See* Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Dr. R, the designated doctor, on a re-examination of the claimant on April 20, 2011, certified that the claimant reached MMI on that date. Dr. R explained that while the claimant may benefit from some further treatment and physical therapy, the claimant was at MMI on that date. [Dr. I], the claimant's treating doctor, in a Letter of Medical Necessity, dated August 2, 2011, stated that he agreed with Dr. R's assessment stating "[a]lthough [the claimant] has reached [MMI], she still requires pain management to help control her pain and other symptoms so that she may continue physical therapy." The Appeals Panel has recognized that the need for additional or future medical treatment does not mean that MMI was not reached at the time it was certified. Appeals Panel Decision (APD) 040142, decided March 1, 2004. Rather MMI signifies that the claimant's condition is more or less stable and significant improvement cannot reasonably be expected. APD 970243, decided April 30, 1997.

Dr. E, the RME doctor, in a Report of Medical Evaluation (DWC-69) and narrative dated June 23, 2011, certified the claimant at MMI on April 5, 2010. Dr. E's MMI date of April 5, 2010, cannot be adopted because his certification of MMI and assigned IR are not based on the entire compensable injury as discussed below.

The hearing officer made a finding of fact that the preponderance of the medical evidence is contrary to the medical conclusions of Dr. R as to MMI. The hearing officer does not reference any medical evidence to support her finding. Dr. R, in a report dated April 26, 2010, had opined the claimant was not at MMI on that date because the claimant needed evaluation for reflex sympathetic dystrophy (RSD)/CRPS, a nerve block and further evaluation and treatment. Dr. R estimated the claimant would reach MMI on July 26, 2010. Dr. R, in her April 20, 2011, report (finding that claimant at MMI on that date) noted that a neurological examination had been performed and stellate ganglion blocks had been performed on August 2 and August 9, 2010. Other records show the claimant was seen by a pain specialist between May 20, 2010, and August 2, 2011. The hearing officer does not cite the preponderance of the other medical

evidence that she believes is contrary to Dr. R's certification. We hold that Dr. R's MMI date is not contrary to the preponderance of the other medical evidence.

Section 408.1225(c) provides that the designated doctor's report has presumptive weight. We reverse the hearing officer's determination that the claimant reached MMI on April 5, 2010, as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We render a new decision that the claimant reached MMI on April 20, 2011, in accordance with the designated doctor's report.

IR

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.

Rule 130.1(c)(3) provides in pertinent part that the assignment of an IR shall be based on the injured worker's condition as of the MMI date considering the medical records and the certifying examination and the doctor assigning the IR shall:

(A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;

(B) document specific laboratory or clinical findings of an impairment;

(C) analyze specific clinical and laboratory findings of an impairment;

(D) compare the results of the analysis with the impairment criteria and provide the following:

(i) [a] description and explanation of specific clinical findings related to each impairment, including [0%] [IRs]; and

(ii) [a] description of how the findings relate to and compare with the criteria described in the applicable chapter of 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)]. The doctor's inability to obtain required measurements must be explained.

The method to rate causalgia and RSD is found on page 3/56 of the AMA Guides. The hearing officer determined, and we have affirmed, that the compensable injury includes CRPS. Dr. E testified at the CCH that there was "not really" any difference between CRPS and RSD. There is no evidence to the contrary.

Dr. R examined the claimant on April 20, 2011, and certified that the claimant reached MMI on that date with a 33% IR. The 33% IR was calculated by measuring loss of range of motion (ROM) of the right wrist using Figure 26, page 3/36 and Figure 29, page 3/38 of the AMA Guides resulting in a 14% right upper extremity (UE) impairment. We note that Dr. R failed to round his measurements to the nearest 10° as required on page 3/36 of the AMA Guides. *See* APD 111384, decided November 23, 2011, and APD 022504-s, decided November 12, 2002. Dr. R then assessed a 48% UE impairment with regard to sensation secondary to causalgia without an explanation as to what he based the 28% UE upon. Dr. R did not identify the specific peripheral nerve which was assigned the impairment, the grade loss used or the calculation applied. Because the narrative report from Dr. R did not properly apply the AMA Guides in assessing the claimant's IR and because Dr. R's report does not comply with Rule 130.1(c)(3) that assessment of IR cannot be adopted.

The hearing officer, in the Discussion portion of her decision, explained why she found the designated doctor, Dr. R's, opinion on the extent of injury supported by a preponderance of the evidence that the claimant's compensable injury of [date of injury], includes CRPS and we have affirmed that determination. The hearing officer then goes on to state:

Notwithstanding the foregoing favorable opinion as to the extent of [the] [c]laimant's compensable injury, [c]laimant's [CRPS] cannot factor into the determination of her [IR], since it is not ratable under the AMA Guides.[1] As [IR] and [MMI] are inextricably intertwined, [c]laimant's [CRPS] likewise cannot influence [c]laimant's date of [MMI]. It therefore is appropriate to adopt the [MMI] date and whole body [IR] assessed by [Dr. E], who evaluated [c]laimant without regard to her [CRPS], and to find that [c]laimant reached [MMI] on April 5, 2010, with an [8%] whole body [IR].

Dr. E, the RME doctor in a DWC-69 and narrative dated June 23, 2011, certified MMI on April 5, 2010, with an 8% IR. Dr. E makes very clear in his report that he does not believe that the claimant has CRPS nor does Dr. E assign a zero rating for CRPS. Rather, Dr. E believes that the claimant does not have CRPS because she does not

[1] The fact that a medical condition exists and is casually related to a compensable injury does not necessarily mean that the claimant's [IR] will include a component greater than zero for the medical condition in question.

have the “four cardinal signs and symptoms of RSD” set out on page 3/56 of the AMA Guides and did not consider CRPS when assessing the claimant’s IR. Dr. E arrives at his 8% IR assessing loss of ROM utilizing Figure 26, page 3/36, Figure 29, page 3/38 and Figure 35, page 3/41 of the AMA Guides. That loss of ROM is rated at 6% whole person impairment.

Dr. E then states:

As far as the neuroma is concerned, neuroma at the forearm is not listed in the [AMA] Guides, however; the [AMA] Guides allow an evaluator is allowed [*sic*] to add between 1 and 3% if he or she believes that a claimant deserves more than the AMA Guides allow. I will exercise that prerogative and add 2%, i.e. total impairment of the whole person is 8%.

A neuroma has not been adjudicated or accepted as part of the compensable injury. Dr. E cites as his authority for the statement that “the [AMA] Guides allow an evaluator . . . to add between 1 and 3% if he or she believes that a claimant deserves more than the [AMA] Guides allow,” a statement on page 2/9 of the AMA Guides. That provision applies to the “treatment of an illness [which] may result in apparently total remission of the patient’s signs and symptoms” even though the patient may not have regained normal good health. We hold that provision does not apply to this case.

Dr. E’s assessment of IR cannot be adopted because Dr. E did not rate the entire compensable injury and rated a condition not found to be part of the compensable injury. Given that we have rendered the April 20, 2011, MMI date of the designated doctor, there are no other assignments of IR with the April 20, 2011, MMI date. The IR assigned by Dr. E cannot be adopted for the reasons stated. Accordingly, we reverse the hearing officer’s determinations that the claimant has an 8% IR and remand the case to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury includes CRPS.

We reverse the hearing officer’s determination that the claimant reached MMI on April 5, 2010, and render a new decision that the claimant reached MMI on April 20, 2011.

We reverse the hearing officer’s determination that the claimant has an 8% whole body IR and remand the case for further consideration.

REMAND INSTRUCTIONS

The designated doctor in this case is Dr. R. On remand, the hearing officer is to determine if Dr. R is still qualified and available to serve as the designated doctor, and if so, request that the designated doctor render an opinion on the IR for the compensable injury to include the CRPS, in accordance with the AMA Guides based on the claimant's condition as of the April 20, 2011, MMI date and in accordance with Rule 130.1(c)(3). The hearing officer is to provide the letter being sent to the designated doctor and the designated doctor's response to the parties and allow the parties to respond. The hearing officer is then to make a determination on IR supported by the evidence. If Dr. R is no longer qualified or available to serve as the designated doctor, another designated doctor is to be appointed pursuant to Rule 127.5(c) to give an opinion on IR for the compensable injury, as of the administratively determined April 20, 2011, date of MMI. The hearing officer is then to make a determination on the claimant's IR.

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 **SEABRIGHT 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge