

APPEAL NO. 130160
FILED MARCH 18, 2013

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 August 24, 2012, with the record closing on December 14, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the date of maximum medical improvement (MMI) is August 5, 2011; (2) the appellant's (claimant) impairment rating (IR) is zero percent; and (3) the compensable injury of [date of injury], does not extend to a cervical sprain/strain, C4-5 disc herniation, lumbar sprain/strain, L4-5 disc bulge, L5-S1 disc bulge, bilateral sacroiliitis, right shoulder sprain/strain, right shoulder impingement syndrome, right shoulder partial thickness tear of the humeral surface fibers of the supraspinatus tendon with retraction, subacromial bursitis of the right shoulder, right ankle sprain/strain, bone marrow edema in the tibial plafond of the right ankle, bone marrow edema in the talar dome of the right ankle, left wrist sprain/strain, left wrist traumatic carpal tunnel syndrome (CTS), right hip sprain/strain, pain disorder associated with both psychological factors and a general medical condition, major depressive disorder, and anxiety.

The claimant appealed all of the hearing officer's determinations. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that [Dr. H] is the latest Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor to address MMI, IR, and extent of injury. The claimant testified that on [date of injury], he was injured when he fell approximately three to four feet to the ground through an improperly installed floor panel on an airplane on which he was working.

EXTENT OF INJURY

That portion of the hearing officer's determination that the [date of injury], compensable injury does not extend to a C4-5 disc herniation, L4-5 disc bulge, L5-S1 disc bulge, bilateral sacroiliitis, right shoulder impingement syndrome, right shoulder partial thickness tear of the humeral surface fibers of the supraspinatus tendon with retraction, subacromial bursitis of the right shoulder, bone marrow edema in the tibial plafond of the right ankle, bone marrow edema in the talar dome of the right ankle, left

wrist traumatic CTS, pain disorder associated with both psychological factors and a general medical condition, major depressive disorder, and anxiety is supported by sufficient evidence and is therefore affirmed.

We now turn to the remaining extent conditions, which are a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain.

As previously mentioned, Dr. H was the latest designated doctor appointed to determine the claimant's extent of injury, MMI, and IR. Dr. H examined the claimant on November 7, 2012. Dr. H was notified that he was to opine specifically on the extent-of-injury conditions at issue in this case. Dr. H determined which of the disputed conditions were a part of the [date of injury], compensable injury, and certified that the claimant reached clinical MMI on August 5, 2011, with a zero percent IR.

The hearing officer noted in the Background Information section of the decision that:

[Dr. H] addressed extent of injury and explained how the contested diagnoses are not part of the compensable injury. Based upon the compensable injury, he certified [the] [c]laimant was at MMI as of August 5, 2011, with a [zero percent] [IR]. These opinions and this certification are supported by a preponderance of the medical evidence.

However, contrary to the hearing officer's statement above, a review of Dr. H's narrative report dated November 7, 2012, indicates that Dr. H did consider and rate some of the disputed conditions as part of the compensable injury; specifically, the cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain.

In his narrative report Dr. H lists clinical impressions of a cervical spine strain/sprain, resolved; lumbar spine strain/sprain, resolved; right shoulder strain/sprain, resolved; right ankle strain/sprain, resolved; left wrist strain/sprain, resolved; right hip strain/sprain/contusion, resolved; major depressive disorder, non-work related. Dr. H also noted that the following were accepted as the compensable injury: right ankle, left leg abrasion, lumbar contusion, and right shoulder contusion.

In his extent of injury opinion, Dr. H notes the following regarding "[t]he reported mechanism of injury of [[date of injury]]":

. . . likely resulted in a soft tissue complaint of the cervical spine.

. . . likely resulted in a strain/sprain of the lumbar spine and contusion.

. . . resulted in a strain/sprain of both shoulders.

. . . resulted in a strain/sprain of the right ankle. . .

. . . likely resulted in a contusion/strain/sprain of the right hip.

The hearing officer incorrectly read Dr. H's opinion on the extent of injury regarding the cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain.

There are numerous medical records in evidence from doctors establishing that the claimant was diagnosed with a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain after the compensable injury. The Appeals Panel has long held expert medical evidence is not required for strains. See Appeals Panel Decision (APD) 120383, decided April 20, 2012, where the Appeals Panel rejected the contention that a cervical strain requires expert medical evidence, and APD 992946, decided February 14, 2000, where the Appeals Panel declined to hold expert medical evidence was required to prove a shoulder strain, and APD 952129, decided January 31, 1996, where the Appeals Panel declined to hold expert medical evidence was required to prove a back strain.

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).

We hold that the hearing officer's determination that the compensable injury does not extend to a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain,

right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain is so against the great weight and preponderance of the evidence to be clearly wrong and manifestly unjust. We therefore reverse that portion of the hearing officer's determination that the compensable injury does not extend to those conditions, and we render a new decision that the compensable injury extends to a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain.

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.

As discussed above, a new decision is rendered that the [date of injury], compensable injury extends to a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain. In Finding of Fact No. 3, which was unappealed, the hearing officer found that the accepted compensable injuries are an injury to the right ankle, left leg abrasion, lumbar contusion, and a right shoulder contusion.

In Finding of Fact No. 6 (we note that the hearing officer mistakenly identified this Finding of Fact as a second Finding of Fact No. 4), the hearing officer found that the August 5, 2011, date of MMI and zero percent IR certified by Dr. H is supported by a preponderance of the other medical evidence, and therefore determined that the claimant reached MMI on August 5, 2011, with a zero percent IR, per Dr. H’s MMI/IR certification. Dr. H specifically considered and rated a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain, as well as the accepted compensable conditions. Dr. H considered and rated the entire compensable injury. The hearing officer’s determination that the claimant reached MMI on August 5, 2011, with a zero percent IR is supported by sufficient evidence and is therefore affirmed.

SUMMARY

We affirm that portion of the hearing officer's determination that the [date of injury], compensable injury does not extend to a C4-5 disc herniation, L4-5 disc bulge, L5-S1 disc bulge, bilateral sacroiliitis, right shoulder impingement syndrome, right shoulder partial thickness tear of the humeral surface fibers of the supraspinatus tendon with retraction, subacromial bursitis of the right shoulder, bone marrow edema in the tibial plafond of the right ankle, bone marrow edema in the talar dome of the right ankle, left wrist traumatic CTS, pain disorder associated with both psychological factors and a general medical condition, major depressive disorder, and anxiety.

We reverse that portion of the hearing officer's determination that the [date of injury], compensable injury does not extend to a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain, and render a new decision that the [date of injury], compensable injury extends to a cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right ankle sprain/strain, left wrist sprain/strain, and right hip sprain/strain.

We affirm the hearing officer's determinations that the date of MMI is August 5, 2011, and that the claimant's IR is zero percent.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge