APPEAL NO. 130377
FILED MAY 1, 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 (CCH) was held on December 10, 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 1, 2010; and (2) the impairment rating (IR) is 10%.

The appellant/cross-respondent (claimant) appealed the hearing officer's determinations of both MMI and IR. The respondent/cross-appellant (carrier) responded, but also requested that the hearing officer's determinations of MMI and IR be reversed. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the date of MMI is the statutory date of July 30, 2010. The hearing officer mistakenly noted August 1, 2010, as the statutory date of MMI the parties agreed was the date the claimant reached MMI. The Benefit Review Conference Report in evidence as Hearing Officer's Exhibit No. 1 also reflects that the parties agreed the claimant reached MMI as of July 30, 2010, per [Dr. S], the designated doctor.

The claimant was injured while lifting trays of bread. In a report dated October 29, 2010, Dr. S noted that the claimant underwent a pre-peritoneal, laparoscopic hernia repair on November 8, 2008, and on December 21, 2009, underwent a "plug and patch repair." Dr. S noted that since the second repair the claimant has not had significant improvement and developed a large hydrocele. The claimant underwent a left hydrocelectomy on March 31, 2011, and a left hydrocelectomy and left orchiectomy on April 5, 2012.

[Dr. L], a doctor selected by the treating doctor to act in his place, examined the claimant on August 17, 2012, and certified that the claimant reached MMI on August 1, 2010, noting that the claimant had still not reached clinical MMI but that August 1, 2010, was the statutory date and assessing a 10% 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. L assessed 10% impairment, placing the claimant in Class

I of 11.5c on page 11/258, of the AMA Guides due to "symptoms and signs of testicular, epididymal, or spermatic cord disease are present and there is anatomic alteration; and continuous treatment is not required; and there are no abnormalities of seminal or hormonal function; or a solitary testis is present." The hearing officer found that the IR evaluation of Dr. L was performed in accordance with the AMA Guides. However, the evidence reflects that the IR assessed by Dr. L was based on the April 5, 2012, left hydrocelectomy and left orchiectomy surgery that occurred after the date of statutory MMI as agreed to by the parties at the CCH.

A review of the record reflects that the parties agreed that the date of MMI is the statutory date of July 30, 2010. Dr. L certified that the claimant reached MMI on August 1, 2010, and assessed the claimant's IR on a condition that was a result of a surgery that occurred after the statutory date of MMI of July 30, 2010. Accordingly, the hearing officer's determination that the claimant reached MMI on August 1, 2010, with a 10% IR as certified by Dr. L is reversed.

The only other certification in evidence is from the designated doctor, Dr. S. Dr. S examined the claimant on October 29, 2010, and certified that the claimant reached MMI on July 30, 2010. Dr. S checks the box marked clinical on the Report of Medical Evaluation (DWC-69); however, the parties agreed at the CCH that July 30, 2010, was the date of statutory MMI. Dr. S noted in his narrative report that the claimant did not have a recurrent hernia but that evaluation is virtually impossible due to the hydrocele. Dr. S assessed an 8% IR using the AMA Guides. Using Table 24 on page 4/152, Dr. S assessed 5% due to sensory deficit, pain, or discomfort of the ilioinguinal nerve and 3% due to sensory deficit, pain, or discomfort of the iliohypogastric nerve. The certification from Dr. S is the only certification in evidence that certified the date of MMI, July 30, 2010, agreed to by the parties. The hearing officer noted that significant treatment issues remained when Dr. S examined the claimant and that treatment was being disputed for various conditions, for which treatment was later accepted. However, the treatment referred to by the hearing officer occurred after the date the parties agreed the claimant had reached statutory MMI.

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 hearing officer's determinations that the date of MMI is August 1, 2010, and the IR is 10% 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 determinations that the claimant reached MMI on August 1, 2010, with a 10% IR and render a new decision that the claimant reached MMI on July 30, 2010, with an 8% IR.

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.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge