APPEAL NO. 130808
FILED MAY 20, 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 February 19, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: the compensable injury of [date of injury], extends to a left knee injury in the form of a sprain, but does not extend to Grade II cervical sprain/strain at C3-4 and Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5; the appellant (claimant) reached maximum medical improvement (MMI) on July 14, 2011; and the claimant's impairment rating (IR) is zero percent.

The claimant appealed the hearing officer's extent-of-injury determinations adverse to him, as well as the hearing officer's MMI and IR determinations. The claimant argues, among other things, that: the claimant's compensable injury includes Grade II cervical sprain/strain at C3-4 and Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5 because the respondent (carrier) accepted cervical and lumbar sprains/strains; the hearing officer erred in adopting the Texas Department of Insurance, Division of Workers' Compensation (Division) designated doctor's July 14, 2011, date of MMI and zero percent IR; the hearing officer erred in denying the claimant a continuance; and the hearing officer showed "unfair prejudicial treatment" to the claimant and "gave preferential treatment and consideration to the carrier alone" during the CCH. The carrier responded, urging affirmance.

The hearing officer's determination that the compensable injury of [date of injury], extends to a left knee injury in the form of a sprain was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and although not noted in the decision and order, the parties verbally stipulated at the CCH that the carrier has accepted a sprain/strain of the cervical, lumbar, and left knee. The claimant testified he was injured when he fell from a ladder while painting.

PROCEDURAL ISSUES

Prior to the February 19, 2013, CCH, the carrier requested and received approval from the Division for a post-designated doctor required medical examination (RME). Prior to the CCH, the carrier requested a continuance for the claimant to attend the

RME, which was granted by the hearing officer. At the CCH the claimant requested a continuance to obtain evidence to rebut the RME doctor's ([Dr. K]) report, which was denied by the hearing officer. The claimant contends that the hearing officer improperly denied his request for continuance to procure expert medical opinion as rebuttal testimony to Dr. K's report. Rulings on continuances are reviewed under an abuse-of-discretion standard and the Appeals Panel will not disturb the hearing officer's ruling on a continuance absent an abuse of discretion. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Considering the facts of this case, we find no abuse of discretion in the hearing officer's ruling denying the claimant's motion for continuance.

The claimant's appeal also contains several allegations of what he believes was improper behavior by the hearing officer during the CCH that shows unfair prejudicial treatment against him. However, a close review of the record does not reveal the hearing officer acted in any improper manner during the CCH.

EXTENT OF INJURY

At the CCH the parties stipulated that the carrier has accepted a sprain/strain of the cervical, lumbar, and left knee. There are numerous medical records in evidence from doctors establishing that the claimant was diagnosed with a cervical sprain/strain, lumbar sprain/strain, Grade II cervical sprain/strain, and Grade II lumbar sprain/strain. Various medical records in evidence contain diagnosis codes for cervical sprain/strain and lumbar sprain/strain, and those same diagnosis codes are also used for Grade II sprain/strain of the cervical spine and Grade II sprain/strain of the lumbar spine.

The hearing officer determined that the [date of injury], compensable injury does not extend to Grade II cervical sprain/strain at C3-4 and Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5. In the Background Information section of the decision, the hearing officer stated:

The . . . disputed conditions appear to be called sprains/strains, but include a Grade II degree of those sprains/strains and are further classified as being tied to various disc levels as would be disc pathology in the nature of a herniation or protrusion. Thus, these disputed conditions would go beyond the accepted condition of sprains of the cervical and lumbar spine and would require expert testimony in order to determine the nature of the injury as described in the disputed issue.

We note that 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.

We do not agree that the disputed conditions of Grade II cervical sprain/strain at C3-4 and Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5 go beyond the cervical sprain/strain and lumbar sprain/strain accepted by the carrier, especially in light of the fact that medical records in evidence use the same diagnosis codes interchangeably for cervical and lumbar sprain/strain and Grade II cervical and lumbar sprain/strain. Furthermore, the carrier has accepted a cervical sprain/strain and a lumbar sprain/strain. Accordingly, we reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to Grade II cervical sprain/strain at C3-4 and Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5, and we render a new decision that the compensable injury of [date of injury], does extend to Grade II cervical sprain/strain at C3-4 and Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5.

MMI AND 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.

[Dr. M] considered and rated the entire compensable injury, which includes Grade II cervical sprain/strain at C3-4, Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5, and a left knee injury in the form of a sprain, and properly calculated an IR for the injury according to 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). The hearing officer determined the claimant reached MMI on July 14, 2011, with a zero percent IR per Dr. M.

Accordingly, we affirm the hearing officer's determination that the claimant reached MMI on July 14, 2011, and that the claimant's IR is zero percent.

SUMMARY

We affirm the hearing officer's determination that the claimant reached MMI on July 14, 2011.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

We reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to Grade II cervical sprain/strain at C3-4 and Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5, and render a new decision that the compensable injury of [date of injury], does extend to Grade II cervical sprain/strain at C3-4 and Grade II lumbar sprain/strain at L2-3, L3-4, and L4-5.

The true corporate name of the insurance carrier is **LUMBERMENS UNDERWRITING ALLIANCE** and the name and address of its registered agent for service of process is

SETH MORIN
4100 ALPHA ROAD, SUITE 610
DALLAS, TEXAS 75244.

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge