APPEAL NO. 131015
FILED JUNE 21, 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 1, 2012, and continued on March 26, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to depression and sexual dysfunction; (2) the compensable injury of [date of injury], does not extend to cervical myelopathy and altered gait; and (3) the appellant/cross-respondent's (claimant) impairment rating (IR) is 13% with a date of maximum medical improvement (MMI) of January 13, 2011. The claimant appealed the hearing officer's extent-of-injury determinations that were adverse to him, and the 13% IR. The respondent/cross-appellant (carrier) responded to the claimant's appeal, urging affirmance. The carrier cross-appealed the hearing officer's determination that the compensable injury of [date of injury], extends to depression and sexual dysfunction. Also, the carrier appealed the hearing officer's IR determination. There is no response to the carrier's cross-appeal from the claimant. Both the claimant and the carrier request that another certification of MMI and IR be adopted which includes an MMI date of January 13, 2011.

DECISION

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

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. V] as the designated doctor on issues of MMI, IR and extent of injury. It is undisputed that the claimant sustained an injury when he was hit in the back of the head by a cable conduit, knocking him unconscious on [date of injury]. The claimant was admitted to a hospital on [date of injury], and a discharge report dated January 10, 2009, states that the claimant was diagnosed with a closed head injury, contusion of the neck and chronic spinal stenosis of the neck. The medical reports in evidence indicate that the claimant sustained cervical disc injuries which necessitated three separate surgeries to the cervical spine at C3-4 and C6-7, respectively on March 18, 2009, August 26, 2009, and September 27, 2010. In evidence is the claimant's Request for Designated Doctor Examination (DWC-32) dated March 13, 2012, and the carrier's Notice of Disputed Issues(s) and Refusal to Pay Benefits (PLN-11) dated March 13, 2009, which state that the carrier has accepted a closed head injury and contusion of the neck.

EXTENT OF INJURY

That portion of the hearing officer's determination that the claimant's compensable injury of [date of injury], extends to depression but does not extend to cervical myelopathy and altered gait is supported by sufficient evidence and is affirmed.

That portion of the hearing officer's determination that the claimant's compensable injury of [date of injury], extends to sexual dysfunction is not supported by the evidence. As previously mentioned, Dr. V was appointed as the designated doctor to determine the claimant's extent of injury. Dr. V examined the claimant on April 23, 2012, and noted in his narrative report that the claimant attributes his depression and sexual dysfunction to his work injury. Dr. V referred the claimant to [Dr. B], for a psychiatric evaluation with regard to the depression and sexual dysfunction. Specifically, Dr. V requested that Dr. B opine on whether the sexual dysfunction was caused by the depression.

Dr. B examined the claimant on June 22, 2012, and he states in his report dated July 6, 2012, that the "[d]esignated doctor wanted to know if the sexual dysfunction was caused by the depression or not as well as evaluating his depression." Dr. B opined in his report that the claimant's compensable injury extends to depression and diagnosed an organic mood disorder. With regard to the sexual dysfunction condition Dr. B states that:

> Please note that decreased libido is one of the diagnostic criteria of a mood disorder and would not be independent of that diagnosis. Therefore, there is no separate diagnosis, in reasonable medical probability, for sexual dysfunction.

In an addendum dated July 18, 2012, Dr. V states that the claimant's compensable injury extends to sexual dysfunction as indicated by Dr. B's report of July 6, 2012. However, Dr. B's report states that it is the claimant that attributes his sexual dysfunction condition as related to his work injury. Dr. B does not indicate that the claimant's sexual dysfunction had been diagnosed by a physician or related to the work injury. Furthermore, Dr. B characterizes the claimant's complaint of sexual dysfunction as a decreased libido and opines that the decreased libido is one of the diagnostic criteria of a mood disorder. Dr. B's report does not establish by expert evidence that sexual dysfunction is related to the compensable injury of [date of injury], within a reasonable degree of medical probability. *See* Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007). Under the facts of this case, the hearing officer's determination that the compensable injury of [date of injury], extends to sexual dysfunction is reversed and a new decision rendered that the compensable injury of [date of injury], does not extend to sexual dysfunction.

MMI/IR

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. *See also* Section 401.011(30)(A). 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. *See also* 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)).

We first address the hearing officer's decision that incorrectly states that the parties stipulated that the statutory date of MMI is January 13, 2011, because review of the record indicates that the carrier did not agree to stipulate to the date of statutory MMI at either CCH held on February 1, 2012, or March 26, 2013. We note that the hearing officer failed to state in the decision and order that he was adding the MMI issue. However, the MMI issue was actually litigated and the hearing officer made a finding of fact, conclusion of law and a decision on that issue.

Dr. V, the designated doctor, examined the claimant on April 23, 2012, and noted in his narrative report dated that same date that the claimant reached statutory MMI on January 13, 2011, as listed on the DWC-32. As previously mentioned, Dr. V referred the claimant for a psychiatric evaluation to assess the extent-of-injury conditions of depression and sexual dysfunction. In an addendum dated July 18, 2012, Dr. V certified that the claimant reached statutory MMI on January 13, 2011, and assessed that the claimant's IR is 13% based on 5% impairment for a cervical spine injury and 8% impairment for depression 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. V's certification of MMI and IR cannot be adopted because he did not consider or rate the entire compensable injury. Although Dr. V mentioned the closed head injury in his report, he did not assess an IR for the accepted closed head injury. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on January 13, 2011, with a 13% IR.

In evidence are other certifications of MMI and IR from Dr. V, [Dr. F], Dr. [Dr. FR], and [Dr. R]; however none of these certifications consider or rate the claimant's depression, which has been administratively determined to be part of the compensable injury of [date of injury].

As there are no certifications of MMI and IR in evidence that can be adopted, we remand the MMI and IR issues back to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm that portion of the hearing officer's determination that the claimant's compensable injury of [date of injury], extends to depression but does not extend to cervical myelopathy and altered gait.

We reverse that portion of the hearing officer's determination that the claimant's compensable injury of [date of injury], extends to sexual dysfunction and we render a new decision that the compensable injury of [date of injury], does not extend to sexual dysfunction.

We reverse the hearing officer's determination that the claimant reached MMI on January 13, 2011, with a 13% IR, and we remand the MMI and IR issues to the hearing officer to make a determination consistent with this decision.

REMAND INSTRUCTIONS

Dr. V is the designated doctor. The hearing officer is to determine whether Dr. V is still qualified and available to be the designated doctor. If Dr. V is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Rule 127.5(c) to determine MMI, which cannot be later than the statutory date of MMI (*see* Section 401.011(30)), and the IR.

The hearing officer is to request from the designated doctor a certification of MMI and IR that considers and rates the entire compensable injury of [date of injury]. The hearing officer is to inform the designated doctor that the compensable injury of [date of injury], does not extend to sexual dysfunction. The hearing officer is to ensure that the designated doctor has all the pertinent medical records to determine MMI and IR. The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is to make MMI and IR determinations which are supported by the evidence and consistent with this decision.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RICHARD J. GERGASKO
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge