APPEAL NO. 131179
FILED JULY 25, 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) on (Docket No. 1) was held on August 20, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. A CCH on (Docket No. 2) and a continuation of Docket No. 1 was held on October 11, 2012, and both dockets were continued on December 7, 2012, February 7, 2013, with the record closing on April 9, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue in Docket No. 1 by deciding that [Dr. Y] was appointed as the designated doctor to examine the appellant (claimant) on September 4, 2012, in accordance with Section 408.0041 and 28 TEX. ADMIN. CODE § 127.5 (Rule 127.5). The hearing officer resolved the disputed issues in Docket No. 2 by deciding that: (1) the compensable injury of [date of injury], extends to a cervical strain but does not extend to post-traumatic headaches, left thigh strain, post-traumatic neurobehavioral disorder, suboccipital neuritis, cervical sprain, thoracic sprain/strain, lumbar sprain/strain, depression, anxiety, adjustment disorder, syncope, or collapse; (2) the claimant reached maximum medical improvement (MMI) on November 9, 2012; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant's average weekly wage (AWW) for the purpose of computing temporary income benefits (TIBs) between June 1, 2012, and August 19, 2012, is $0.00 pursuant to Section 408.0446(b) and Rule 128.7(d).

The claimant appealed, disputing the hearing officer's extent-of-injury determinations that were unfavorable to her. The claimant also appealed the hearing officer's determinations of MMI and IR. The respondent (self-insured) responded, urging affirmance of the disputed determinations.

The hearing officer's determination in Docket No. 1, that Dr. Y was appointed as designated doctor to examine the claimant on September 4, 2012, in accordance with Section 408.0041 and Rule 127.5 was not appealed and has become final pursuant to Section 410.169. The hearing officer's determinations that the compensable injury extends to a cervical strain and that the claimant's AWW for the purpose of computing TIBs between June 1, 2012, and August 19, 2012, is $0.00 pursuant to Section 408.0446(b) and Rule 128.7(d) were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury; (2) Dr. Y was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI, IR, and extent of the compensable injury; and (3) the compensable injury extends to a head contusion and left thigh contusion.

The claimant alleges in her appeal that it was error for the hearing officer not to send a letter of clarification to Dr. Y on the issue of extent of injury. We find no error in the hearing officer's decision not to send a letter of clarification to Dr. Y regarding the extent of the injury.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to post-traumatic headaches, left thigh strain, post-traumatic neurobehavioral disorder, suboccipital neuritis, cervical sprain, thoracic sprain/strain, lumbar sprain/strain, depression, anxiety, adjustment disorder, syncope, or collapse is supported by sufficient evidence and is affirmed.

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. 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.

In the Background Information portion of his decision the hearing officer stated that Dr. Y rated the compensable injury and provided a reasonable explanation for the choice of MMI date. The hearing officer found that "Dr. [Y] certified the claimant reached [MMI] on November 9, 2012, with a [zero percent] [IR]; this certification is not contrary to the preponderance of the other medical evidence." The hearing officer's finding that the certification from Dr. Y is not contrary to the preponderance of the

evidence is supported by sufficient evidence and is affirmed. However, Dr. Y examined the claimant on November 9, 2012, and certified that the claimant reached MMI on June 10, 2011, considering the cervical strain, head contusion and left thigh contusion. The hearing officer mistakenly determined that the claimant reached MMI on the date of the examination, November 9, 2012, from Dr. Y rather that the actual date of MMI certified by Dr. Y, June 10, 2011. There is no certification in evidence with an MMI date of November 9, 2012. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on November 9, 2012, and render a new decision that the claimant reached MMI on June 10, 2011, to conform to the evidence. *See* Appeals Panel Decision (APD) 121042, decided July 26, 2012, and APD 100661, decided July 16, 2010.

The hearing officer's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's determination that the compensable injury does not extend to post-traumatic headaches, left thigh strain, post-traumatic neurobehavioral disorder, suboccipital neuritis, cervical sprain, thoracic sprain/strain, lumbar sprain/strain, depression, anxiety, adjustment disorder, syncope, or collapse.

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

We reverse the hearing officer's determination that the claimant reached MMI on November 9, 2012, and render a new decision that the claimant reached MMI on June 10, 2011.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
[ADDRESS]
[CITY], TEXAS [ZIP CODE].

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge