APPEAL NO. 131673
FILED SEPTEMBER 3, 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 April 25, 2013, with the record closing on June 12, 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], does not extend to a right knee medial and lateral meniscus tear and right carpal tunnel syndrome (CTS); (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 4, 2010; (3) the claimant's impairment rating (IR) is 0%; and (4) the claimant does not have disability from May 7, 2010, to March 27, 2012.

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

DECISION

Affirmed 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 self-insured accepted liability for a cervical strain, a right wrist strain, and a head contusion.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to a right knee medial and lateral meniscus tear and right CTS is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant does not have disability resulting from the compensable injury of [date of injury], from May 7, 2010, to March 27, 2012, 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 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 determined that the claimant reached MMI on May 4, 2010, with a 0% IR per [Dr. P], the second designated doctor appointed by the Division, for the purpose of MMI and IR.

Dr. P initially examined the claimant on November 11, 2011, and certified that the claimant had not reached MMI but was expected to do so on or about February 11, 2012. In a narrative dated November 11, 2011, Dr. P noted a diagnosis of "[p]ossible [CTS] of the right wrist, awaiting diagnostic tests and surgery." Dr. P noted that the claimant had not reached MMI because "the claimant is soon to undergo surgery on her right wrist."

A letter of clarification was sent to Dr. P on December 13, 2011, notifying Dr. P that the compensable injury as accepted by the self-insured is cervical sprain, head contusion, and a right wrist sprain, and that Dr. P's certification that the claimant had not reached MMI included non-compensable conditions that were in dispute.

Dr. P responded on December 14, 2011, and provided an alternative certification for the compensable injury as accepted by the self-insured. Regarding MMI, Dr. P stated:

Based on the [Medical Disability Advisor, Workplace Guidelines for Disability Duration, excluding all sections and tables relating to rehabilitation published by the Reed Group, Ltd. (MDA)], a cervical sprain would be a maximum of 42 days of disability, wrist strain would be 28 days and head contusion would be 3 days. Therefore, using the cervical spine as a maximum, the MMI date would have been approximately [May 4, 2010]."

Dr. P assessed a 0% IR.

The hearing officer adopted Dr. P's alternative certification, and determined that the claimant reached MMI on May 4, 2010, with a 0% 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. P based his determination of MMI solely on the MDA. Accordingly, the hearing officer's determination of MMI is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. *See* Appeals Panel Decision (APD) 130187, decided March 18, 2013, and APD 130191, decided March 13, 2013. We reverse the hearing officer's determination that the claimant reached MMI on May 4, 2010, and that the claimant's IR is 0%.

The claimant contends in her appeal that she has not yet reached MMI, and noted at the CCH that the other MMI/IR certifications in evidence do not consider and rate her entire compensable injury. We note that the hearing officer's determination that the compensable injury does not extend to a right knee medial and lateral meniscus tear and right CTS has been affirmed.

As previously mentioned, Dr. P had certified that the claimant had not reached MMI. However, Dr. P determined that the claimant had not reached MMI based on possible surgery for right CTS. As previously mentioned, the hearing officer's determination that the compensable injury does not extend to right CTS has been affirmed. Dr. P considered a condition that has been determined not to be a part of the compensable injury, and as such his certification cannot be adopted. *See* APD 110463, decided June 13, 2011; and APD 101567, decided December 20, 2010.

There are three other MMI/IR certifications in evidence. The first is from [Dr. J], a doctor appointed as designated doctor by the Division prior to Dr. P's appointment. Dr. J examined the claimant on July 23, 2010, and certified that the claimant reached MMI on that date with a 0% IR. In his narrative report Dr. J noted diagnoses of cervical strain, right wrist strain, and right knee strain. Dr. J does not discuss or rate a head contusion, which has been accepted by the self-insured. Dr. J placed the claimant in Cervicothoracic Diagnosis-Related Estimate Category I: Complaints or Symptoms, for 0% impairment, and based on range of motion measurements taken of her right wrist and right knee assessed a 0% for the right wrist and right knee. However, because Dr. J did not discuss or rate the accepted head contusion, he has not considered and rated the entire compensable injury. Accordingly, his MMI/IR certification cannot be adopted. *See* APD 110267, decided April 19, 2011, and APD 043168, decided January 20, 2005.

Another MMI/IR certification in evidence is from [Dr. F], a doctor selected by the treating doctor to act in the treating doctor's place. Dr. F examined the claimant on

January 17, 2013, and determined that the claimant reached clinical MMI on January 5, 2011, with a 4% IR. However, Dr. F notes in his narrative report that the claimant underwent a partial medial and lateral meniscectomy on October 5, 2010. Dr. F makes clear in his narrative that he based his date of MMI and IR in part on the partial meniscectomy. The hearing officer's determination that the compensable injury does not extend to a right knee medial and lateral meniscus tear has been affirmed. Accordingly, Dr. F's MMI/IR certification cannot be adopted. APD 110463, *supra*, and APD 101567, *supra*.

Dr. F submitted another MMI/IR certification on March 22, 2013, after being notified that Dr. P had stated in his initial MMI/IR certification that the claimant was not at MMI because she was scheduled to have surgery for her right wrist. Dr. F certified that the claimant reached MMI statutorily on March 23, 2012, with a 13% IR. We note there was no agreement or stipulation taken regarding the date of statutory MMI. In an attached narrative Dr. F again discusses the medial and lateral meniscectomy performed on October 5, 2010, but also notes that the claimant's injuries have resulted in CTS, and that the claimant did not receive all healthcare reasonably required for this injury. Dr. F's 13% IR includes a 4% lower extremity impairment for a partial medial and lateral meniscectomy, as well as a 10% upper extremity impairment for CTS. The hearing officer's determination that the compensable injury of [date of injury], does not extend to a right knee medial and lateral meniscus tear and right CTS has been affirmed. Accordingly, Dr. F's subsequent MMI/IR certification cannot be adopted. APD 110463, *supra*, and APD 101567, *supra*.

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

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to a right knee medial and lateral meniscus tear and right CTS.

We affirm the hearing officer's determination that the claimant does not have disability resulting from the compensable injury of [date of injury], from May 7, 2010, to March 27, 2012.

We reverse the hearing officer's determinations that the claimant reached MMI on May 4, 2010, with a 0% IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

The hearing officer is to make a finding on the date of statutory MMI or have the parties agree or stipulate to the date of statutory MMI. The hearing officer is to advise the designated doctor the date of statutory MMI.

Dr. P is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. P is still qualified and available to be the designated doctor. If Dr. P is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the [date of injury], compensable injury.

The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], includes a cervical strain, a right wrist strain, and a head contusion as accepted by the self-insured. Further, the hearing officer is also to advise the designated doctor that the compensable injury does not extend to a right knee medial and lateral meniscus tear and right CTS as administratively determined.

The certification of MMI can be no later than the statutory date of MMI. The certification of MMI should be 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 considering the physical examination and the claimant's medical records and not based solely on the date the MDA states the claimant could return to work.

The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the AMA Guides and the provisions of Rule 130.1(c)(3). The parties are to be allowed an opportunity to respond. The hearing officer is to determine the issues of MMI and IR 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

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

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge