

APPEAL NO. 132423  
FILED DECEMBER 19, 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 was held on September 25, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [date of injury], compensable injury does not extend to right ankle sprain/strain and right foot sprain/strain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 11, 2013; and (3) the claimant's impairment rating (IR) is two percent. The claimant appealed all of the hearing officer's determinations, arguing that they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The respondent (carrier) responded, urging affirmance of all the disputed determinations.

**DECISION**

Affirmed in part, and reversed and remanded in part.

The parties stipulated that the compensable injury of [date of injury], includes at least a right wrist sprain/strain, right hand sprain/strain and right fourth finger sprain/strain. The claimant testified that she injured herself when her right foot got caught in a drain and she fell forward. She testified that she caught herself on a soda machine, injuring her right hand and wrist.

**EXTENT OF INJURY**

The hearing officer's determination that the [date of injury], compensable injury does not extend to right ankle sprain/strain and right foot sprain/strain 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 January 11, 2013, with a two percent IR in accordance with the certification of [Dr. L]. The hearing officer states in Findings of Fact Nos. 3 and 6 that Dr. L is the Division-selected designated doctor with regard to MMI/IR and his certification is not contrary to the preponderance of the evidence. However, the evidence indicates that Dr. L is not, in fact, the designated doctor but a doctor selected by the treating doctor to act in his place. His narrative report dated January 28, 2013, also states that he was referred by the treating physician. Therefore, Dr. L's certification does not have presumptive weight on the issues of MMI/IR.

The evidence in the record indicates that there has not been a designated doctor appointed in this case to address MMI/IR. However, Section 408.125(a) provides that if an IR is disputed, the commissioner shall direct the employee to be examined by a designated doctor chosen by mutual agreement of the parties. In Appeals Panel Decision (APD) 020385, decided March 18, 2002, the Appeals Panel stated that "[u]nder the provisions of Section 408.125, no determination can be made regarding the claimant's IR because there is no report from a designated doctor."

As the hearing officer mistakenly found that Dr. L was the designated doctor appointed for MMI/IR and there has been no designated doctor appointed on the issues of MMI/IR in this case, we reverse the hearing officer's determinations that the claimant reached MMI on January 11, 2013, with a two percent IR, and remand the issues of MMI/IR to the hearing officer for further action consistent with this decision.

We further note that Dr. L made an error in the calculation of the claimant's IR. He based the IR on range of motion measurements of the claimant's wrists and right fourth finger. After adjusting the right wrist measurements by comparing the contralateral side, Dr. L found a three percent upper extremity (UE) impairment. He additionally found a four percent UE impairment for the right fourth finger, and combined them for a seven percent UE impairment. Dr. L then notes that he used Table 3, page 3/20 of 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) to convert the seven percent

UE impairment to a two percent whole person (WP) impairment. However, Table 3 on page 3/20 indicates that a seven percent UE impairment converts to a four percent WP impairment, not a two percent IR.

### **SUMMARY**

We affirm the hearing officer's determination that the [date of injury], compensable injury does not extend to right ankle sprain/strain and right foot sprain/strain.

We reverse the hearing officer's determinations that the claimant reached MMI on January 11, 2013, with a two percent IR, and remand the issues of MMI/IR to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand, the hearing officer is to request the appointment of a designated doctor for the issues of MMI/IR. The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], includes a right wrist sprain/strain, right hand sprain/strain and right fourth finger sprain/strain, as stipulated to by the parties. The hearing officer is also to advise the designated doctor that the [date of injury], compensable injury does not extend to right ankle sprain/strain and right foot sprain/strain, as administratively determined. The hearing officer is to request the designated doctor to give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is to reconsider the evidence on MMI/IR, including the designated doctor's certification and in light of the fact that Dr. L is a doctor selected by the treating doctor to act in his place, and not the designated doctor that was appointed by the Division to determine MMI/IR. The hearing officer is then to make a determination on MMI/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 **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge