APPEAL NO. 132440
FILED DECEMBER 5, 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 September 5, 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 cauda equina syndrome with bowel and bladder impairment; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 26, 2009; and (3) the claimant's impairment rating (IR) is 0%.

The claimant appealed all of the hearing officer's determinations on a sufficiency of the evidence point of error. The claimant also contends that [Dr. F], the post-designated doctor required medical examination (RME) doctor, May 26, 2009, date of MMI and 0% IR adopted by the hearing officer does not consider and rate the entire compensable injury, including a disc herniation at L3-4 accepted by the respondent (carrier). The carrier responds, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], that extends to a herniated disc at L3-4.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to cauda equina syndrome with bowel and bladder impairment 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 26, 2009, with a 0% IR per Dr. F, the post-designated doctor RME doctor. Dr. F examined the claimant on June 11, 2013, and certified in a Report of Medical Evaluation (DWC-69) of that same date that the claimant reached clinical MMI on May 26, 2009, with a 0% IR. In an attached narrative report Dr. F notes the claimant's diagnoses as "[l]umbar strain, related"; "[i]diopathic transverse myelitis, not related"; and "[d]egenerative lumbar disc disease, not related." Regarding his opinion on MMI Dr. F states:

> [Dr. Fl is in error, however, with his impression "[m]ore likely than not, the disc herniation at L3-4 occurred as a result of the fall on [date of injury]." Both "[Official Disability Guidelines-Treatment in Workers' Compensation published by Work Loss Data Institute (ODG)], under causation of herniated discs and degenerative disc disease, as well as the American Medical Association Guides to the evaluation of disease and Injury Causation . . . state that the degenerative discs and disc herniations are due to genetics, lifestyle, and age, not trauma such as a fall.
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> At most, the fall could have caused a lumbar spine strain/sprain. Both [ODG] and Quebec Task Force . . . state that lumbar strain/sprains would heal with or without treatment by 12 weeks, or by May 26, 2009. That would be the date of [MMI].

Dr. F placed the claimant in Diagnosis-Related Estimate (DRE) Lumbosacral Category I: Complaints or Symptoms for 0% IR.

We note that Dr. F's MMI opinion regarding the claimant's lumbar sprain/strain references only the ODG and does not specifically discuss the claimant's physical exam findings and medical records. The claimant contends that Dr. F's MMI/IR certification cannot be adopted because it does not consider and rate the entire compensable injury. We have affirmed the hearing officer's determination that the compensable injury does not extend to cauda equina syndrome with bowel and bladder impairment. However, the parties stipulated at the CCH that the compensable injury extends to a herniated

disc at L3-4. Dr. F makes clear in his narrative report that he did not consider and rate a herniated disc at L3-4, which is part of the compensable injury. As Dr. F does not consider and rate the entire compensable injury, his MMI/IR certification cannot be adopted. *See* Appeals Panel Decision (APD) 110267, decided April 19, 2011, and APD 043168, decided January 20, 2005. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on May 26, 2009, with a 0% IR.

There are two other MMI/IR certifications in evidence, both from [Dr. R], the designated doctor appointed by the Division to determine MMI and IR. Dr. R examined the claimant on February 12, 2013, and in a DWC-69 dated February 13, 2013, certified the claimant reached MMI statutorily on February 12, 2012, with a 60% IR. Dr. R placed the claimant in DRE Lumbosacral Category VII: Cauda Equina Syndrome with Bowel or Bladder Impairment for 60% impairment. On April 17, 2013, a letter of clarification (LOC) was sent to Dr. R notifying him that the correct statutory date of MMI in this case is February 24, 2012. Dr. R responded on April 18, 2013, and attached an amended DWC-69 certifying the claimant reached MMI statutorily on February 24, 2012, with a 60% IR. Because we have affirmed the hearing officer's determination that the compensable injury does not extend to cauda equina syndrome with bowel and bladder impairment, Dr. R's MMI/IR certifications cannot be adopted. APD 110267, *supra*, and APD 043168, *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 cauda equina syndrome with bowel and bladder impairment.

We reverse the hearing officer's determinations that the claimant reached MMI on May 26, 2009, 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

Dr. R is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. R is still qualified and available to be the designated doctor. If Dr. R 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.

On remand the hearing officer is to request the parties to stipulate to the date of statutory MMI. If the parties are unable to stipulate, the hearing officer should take additional evidence to determine the date of statutory MMI. The hearing officer is to advise the designated doctor the date of statutory MMI, and to advise the designated doctor that the compensable injury extends to a herniated disc at L3-4 as stipulated to by the parties. The hearing officer is to further advise the designated doctor that the compensable injury does not extend to cauda equine syndrome with bowel and bladder impairment as administratively determined. The hearing officer is to request the designated doctor to give an opinion on the claimant's MMI, which cannot be after the statutory date of MMI, and rate the entire compensable injury in accordance with 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) considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on 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 **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge