APPEAL NO. 132574
FILED DECEMBER 18, 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 October 7, 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 hearing loss; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 7, 2012; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed the hearing officer's extent of injury and IR determinations, contending that the evidence does not support those determinations. The respondent (carrier) responded, urging affirmance. The hearing officer's determination that the claimant reached MMI on December 7, 2012, has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that he was injured on [date of injury], when the water line on which he was closing a valve burst, knocking the claimant off of his ladder and causing him to fall approximately five feet to the ground.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to a hearing loss is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (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 the claimant reached MMI on December 7, 2012, with a zero percent IR per [Dr. E], the designated doctor appointed by the Division. As discussed above, the hearing officer's MMI determination was not appealed and has become final pursuant to Section 410.169.

In a Report of Medical Evaluation (DWC-69) dated December 7, 2012, Dr. E certified that the claimant reached clinical MMI on that same date with a zero percent IR. In an attached narrative report, Dr. E discussed a report from [Dr. K], an ENT specialist. Dr. E noted that Dr. K assessed a zero percent impairment for the claimant's hearing problems. Based on examination findings and previous EMGs, Dr. E assessed zero percent impairment for the claimant's cervical and lumbar spine. Dr. E also assessed zero percent impairment based on Dr. K's opinion for the claimant's hearing loss. However, as previously discussed, we have affirmed the hearing officer's determination that the compensable injury does not extend to a hearing loss. Dr. E assigned impairment for a condition that has been determined to be noncompensable and as such his IR cannot be adopted. *See* Appeals Panel Decision (APD) 110463, decided June 13, 2011; and APD 101567, decided December 20, 2010. Accordingly, we reverse the hearing officer's determination that the claimant's IR is zero percent.

In evidence is a narrative report from [Dr. D] dated February 28, 2013. Dr. D stated that the claimant reached MMI on December 7, 2012, with a five percent IR by placing the claimant in Diagnosis-Related Estimate Lumbosacral Category II: Minor Impairment. Dr. D noted diagnoses of thoracic sprain/strain, lumbar sprain/strain, muscle spasms, and resolved cervical sprain/strain. We note that the evidence does not contain a DWC-69 completed by Dr. D regarding the claimant's MMI/IR.

There are no other MMI/IR certifications in evidence containing an MMI date of December 7, 2012, as determined by the hearing officer. As previously discussed, the hearing officer's determination that the claimant reached MMI on December 7, 2012, was not appealed and has become final pursuant to Section 410.169. As there is no MMI/IR certification in evidence that can be adopted, we remand the issue of 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 hearing loss.

We reverse the hearing officer's determination that the claimant's IR is zero percent, and we remand the issue of IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. E is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. E is still qualified and available to be the designated doctor. If Dr. E 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 IR for the [date of injury], compensable injury.

The hearing officer is to take stipulations from the parties as to what conditions comprise the [date of injury], compensable injury. If the parties are not willing to make stipulations regarding the extent of the compensable injury, the hearing officer is to make findings of fact, conclusions of law, and a decision on the extent of the [date of injury], compensable injury, considering the evidence. Once the hearing officer makes a determination of the extent of the [date of injury], compensable injury, the hearing officer is to advise the designated doctor what conditions are included in the [date of injury], compensable injury. The hearing officer is also to advise the designated doctor that the [date of injury], compensable injury does not extend to a hearing loss as administratively determined. The hearing officer is to further advise the designated doctor that the date of MMI in this case is December 7, 2012. The hearing officer is to request the designated doctor to rate the entire compensable injury as of the December 7, 2012, date of MMI, 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 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 **AMERICAN HOME ASSURANCE 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 78701-3218.

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge