APPEAL NO. 132857
FILED JANUARY 21, 2014

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 November 6, 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 disc disease at C5-6 and C6-7 aggravated by the injury, and C7 radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 9, 2012; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing all of the hearing officer's determinations, contending that there was sufficient causation evidence to prove that the extent conditions in dispute are compensable. The claimant further argues that [Dr. M], a doctor selected by the treating doctor to act in his place, certification of MMI and IR should be adopted. 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: (1) on [date of injury], the claimant sustained a compensable injury; (2) [Dr. H] is the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for the issues of MMI, IR, extent of injury, and return to work; and (3) the statutory date of MMI is March 9, 2012. The claimant testified that he injured his neck when he was stopped in his vehicle and another car hit his from behind. The record indicates that the carrier accepted a cervical sprain only. Additionally, the evidence in the record indicates that the claimant underwent surgery to address the conditions in dispute on December 12, 2011.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of [date of injury], does not extend to disc disease at C5-6 and C6-7 aggravated by the injury, and C7 radiculopathy is supported by sufficient evidence and is affirmed.

**MMI AND 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. 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 March 9, 2012, with a zero percent IR per Dr. H, the designated doctor.

Dr. H examined the claimant on December 6, 2012. In a narrative report dated December 31, 2012, Dr. H assessed the claimant's diagnoses as C7 radiculopathy and disc disease at C5-6 and C6-7 aggravated by the injury. In an amended Report of Medical Evaluation (DWC-69) dated July 17, 2013, Dr. H certified that the claimant reached MMI statutorily on March 9, 2012, and assigned a zero percent IR. In explaining his choice of MMI date, Dr. H stated that "[the claimant] underwent corrective cervical spine surgery for the above diagnoses on December 12, 2011; he was healing well when last seen by his surgeon on June 12, 2012 [Dr. N]. His C7 radiculopathy was successfully treated by his cervical surgery." Dr. H placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I for a zero percent impairment because his exam found essentially no objective findings.

Dr. H's certification of MMI and IR includes the diagnoses of disc disease at C5-6 and C6-7 aggravated by the injury, and C7 radiculopathy. However, as noted above, we have affirmed the hearing officer's determination that the compensable injury of [date of injury], does not extend to these conditions. Dr. H's certification considers conditions determined not to be a part of the compensable injury, and as such it 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 reached MMI on March 9, 2012, with a zero percent IR.

There is only one other certification of MMI and IR in evidence, which is from Dr. M, a doctor selected by the treating doctor acting in place of the treating doctor. Dr. M examined the claimant on August 28, 2013, and in an amended DWC-69 certified that the claimant reached MMI statutorily on March 9, 2012, with a five percent IR. Dr. M based the five percent IR on nonuniform loss of range of motion and placed the claimant in DRE Cervicothoracic Category II. Dr. M does not indicate what conditions he considered to be compensable, and he appears to consider the December 12, 2011, surgery which was performed to address conditions determined not to be part of the compensable injury. Accordingly, Dr. M's certification cannot be adopted. *See* APD 110463, *supra*; and APD 101567, *supra.*

Since there is no other certification of MMI and IR 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 disc disease at C5-6 and C6-7 aggravated by the injury, and C7 radiculopathy.

We reverse the hearing officer's determination that the claimant reached MMI on March 9, 2012, with a zero percent IR, and remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

## REMAND INSTRUCTIONS

Dr. H is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H 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 sprain as accepted by the carrier. Further, the hearing officer is to advise the designated doctor that the [date of injury], compensable injury does not extend to disc disease at C5-6 and C6-7 aggravated by the injury, and C7 radiculopathy.

The hearing officer is to request the designated doctor to rate the entire compensable injury based on the claimant's condition as of the date of MMI, which cannot be a date after March 9, 2012, the date of statutory 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 and 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 **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** 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**.

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge