

APPEAL NO. 142523
FILED JANUARY 26, 2015

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 16, 2014, and October 28, 2014, in Lubbock, 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], extends to concussion and impaired concentration; (2) the compensable injury of [Date of Injury], does not extend to post-concussion syndrome, left posterior parietal hematoma/contusion, post-traumatic stress disorder, headaches, and depression; (3) the date of the appellant's (claimant) maximum medical improvement (MMI) is March 19, 2013; and (4) the claimant's impairment rating (IR) is five percent.

The claimant appealed the hearing officer's extent-of-injury determination that was adverse to her, as well as the hearing officer's MMI and IR determinations on a sufficiency of the evidence point of error. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

The hearing officer's determination that the compensable injury of [Date of Injury], extends to concussion and impaired concentration was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury]. The claimant, a nurse, testified that she was assaulted by a patient which resulted in the claimant losing consciousness when her head hit a metal seclusion door frame.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to post-concussion syndrome, post-traumatic stress disorder, and depression is supported by sufficient evidence and is affirmed.

The hearing officer also determined in part that the compensable injury of [Date of Injury], does not extend to headaches.

In evidence is a medical record from UMC Health System dated [Date of Injury], in which one of the claimant's coworkers reported that a patient grabbed the claimant and slammed her head into a metal door frame, causing the claimant to lose consciousness for approximately two minutes. Emergency room records dated [Date of Injury], noted that the claimant complained of severe head pain to the left scalp, and a CT scan taken that same day noted a left posterior scalp hematoma. A hospital record dated May 9, 2012, noted a diagnosis, among other things, of a scalp hematoma. Also in evidence is a medical record dated May 9, 2012, from (Dr. C), noting that the claimant has a hematoma to her left parietal area, and that the claimant has had headaches since the date of injury. Numerous records from Dr. C in evidence note that the claimant had persisting headaches from the date of injury, and a record from Dr. C dated March 19, 2013, notes that she continues to have almost daily headaches related to the concussion.

In this case it was undisputed that the claimant's head struck a metal door frame with such force that she lost consciousness. Numerous records in evidence from Dr. C from two days after the date of injury onward diagnose the claimant with headaches. Under the facts of this case and with the described mechanism of injury, we decline to hold that expert medical evidence was required to prove headaches. Accordingly, we hold that portion of the hearing officer's determination that the compensable injury does not extend to headaches is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We therefore reverse that portion of the hearing officer's determination, and we render a new decision that the compensable injury of [Date of Injury], extends to headaches.

The hearing officer also determined in part that the compensable injury of [Date of Injury], does not extend to left posterior parietal hematoma/contusion. The hearing officer noted in the Discussion portion of the decision that (Dr. W), the designated doctor who was appointed to determine extent of the compensable injury, concluded that left posterior parietal hematoma was part of the compensable injury "because of [the] [c]laimant's depression and decreased concentration. . . ." However, Dr. W stated in her report dated May 2, 2014, that left posterior parietal hematoma/contusion was part of the compensable injury because that condition is "documented in the records." Dr. W does not state in her report that a left posterior parietal hematoma/contusion is part of the compensable injury because of the claimant's depression and decreased concentration, as stated by the hearing officer. In Appeals Panel Decision (APD) 130723, decided May 6, 2013, and APD 130915, decided May 20, 2013, the Appeals Panel reversed the hearing officer's extent-of-injury determination because he had misread the causation letter in evidence. Although the hearing officer in this case could accept or reject in whole or in part the opinion of Dr. W, or any other evidence, the hearing officer misread Dr. W's extent-of-injury opinion regarding the left posterior

parietal hematoma/contusion. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to left posterior parietal hematoma/contusion, and we remand the issue of whether the compensable injury of [Date of Injury], extends to left posterior parietal hematoma/contusion to the hearing officer for further action consistent with this decision.

MMI/IR

The hearing officer determined that the date of the claimant's MMI is March 19, 2013, and that the claimant's IR is five percent as certified by Dr. W, the designated doctor.

Dr. W examined the claimant on May 17, 2013, and certified that the claimant reached MMI on March 19, 2013, with a five percent IR. Dr. W used Table 2, Mental Status Impairments, on page 4/142 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), because she noted that although impairment existed, the claimant had ability to perform satisfactorily most activities of daily living.

Given that we have reversed and remanded a portion of the extent-of-injury determination to the hearing officer, we also reverse the hearing officer's determinations that the claimant's MMI is March 19, 2013, and that the claimant's IR is five percent, and 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 post-concussion syndrome, post-traumatic stress disorder, and depression.

We reverse the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to headaches, and we render a new decision that the compensable injury of [Date of Injury], extends to headaches.

We reverse the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to left posterior parietal hematoma/contusion, and we remand the issue of whether the compensable injury of [Date of Injury], extends to left posterior parietal hematoma/contusion for further action consistent with this decision.

We reverse the hearing officer's determination that the date of the claimant's MMI is March 19, 2013, and that the claimant's IR is five percent, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. W is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. W is still qualified and available to be the designated doctor. If Dr. W is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 28 TEX. ADMIN. CODE § 127.5(c) (Rule 127.5 (c)) to determine MMI and the IR.

On remand, the hearing officer is to fully consider Dr. W's May 2, 2014, report regarding the extent of the compensable injury and give that report proper weight in making her determination of whether the compensable injury of [Date of Injury], extends to left posterior parietal hematoma/contusion. The hearing officer is then to make a determination whether the compensable injury of [Date of Injury], extends to left posterior parietal hematoma/contusion.

The hearing officer is to inform the designated doctor whether or not the compensable injury of [Date of Injury], extends to left posterior parietal hematoma/contusion depending upon her determination of the compensability of that condition. The hearing officer is to inform the designated doctor that the injury of [Date of Injury], extends to concussion and impaired concentration, as well as headaches. The hearing officer is also to inform the designated doctor that the compensable injury of [Date of Injury], does not extend to post-concussion syndrome, post-traumatic stress disorder, and depression. 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 hearing officer's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is 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 Texas Department of Insurance, Division of Workers'

Compensation, 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 **ZURICH AMERICAN 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 78701-3232.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge