

APPEAL NO. 170849
FILED JUNE 6, 2017

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 March 6, 2017, 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 aggravation of T3 through T7 herniations with nerve root irritation and cauda equina-like syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 29, 2016; (3) the claimant's impairment rating (IR) is zero percent; (4) the claimant had disability from January 12 through July 17, 2016, due to the injury of (date of injury), but not thereafter through the date of the CCH; and (5) (Dr. G) was not properly appointed designated doctor in accordance with Section 408.0041 and 28 TEX. ADMIN. CODE § 127.130(b)(8)(B) (Rule 127.130(b)(8)(B))¹ for the examination on November 1, 2016, because he did not have credentials to examine the claimed spinal cord injury.

The claimant appealed the hearing officer's determinations regarding extent of injury, MMI/IR and disability as being contrary to the preponderance of the evidence and argued further that the hearing officer erred in failing to appoint a qualified designated doctor to address the extent-of-injury issue following his determination that Dr. G was not qualified pursuant to Rule 127.130(b)(8)(B) to conduct the designated doctor examination on November 1, 2016.

The respondent (carrier) responded, urging affirmance.

The hearing officer's determination that Dr. G was not properly appointed as designated doctor in accordance with Section 408.0041 and Rule 127.130(b)(8)(B) was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The claimant sustained a compensable injury on (date of injury), when she tripped on a rug and fell onto her right hip and buttocks. She eventually developed cauda equina-like symptoms which were determined to be related to the disputed thoracic disc herniations with nerve root irritation. The carrier has accepted as

¹ We note that both the hearing officer in his Decision and Order and the Benefit Review Conference Report mistakenly refer to this rule as Rule 127.130(8)(B).

compensable a lumbar strain and contusion but argues that the disputed conditions are unrelated to the compensable injury of (date of injury).

The claimant filed an amended Request for Designated Doctor Examination (DWC-32) dated October 6, 2016, requesting the appointment of a designated doctor to address MMI, IR and extent of the compensable injury. In response, the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed Dr. G who examined the claimant on November 1, 2016. Based upon his examination Dr. G opined that the compensable injury resulted in the conditions in dispute. Additionally, Dr. G issued alternative Reports of Medical Evaluation (DWC-69) finding the claimant not at MMI with regard to the disputed conditions. When considering solely the accepted lumbar strain and contusion, Dr. G determined that the claimant reached MMI on April 28, 2016, with a zero percent IR.

EXTENT OF INJURY

Section 408.0043 provides, in part, with regard to designated doctors as follows:

(b) A person described by Subsection (a) who reviews a specific workers' compensation case must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving.

Rule 127.130(b)(8)(B) provides, in part, as follows:

To examine spinal cord injuries . . . a designated doctor must be board certified in neurological surgery, neurology, physical medicine and rehabilitation, orthopaedic surgery, or occupational medicine by the [American Board of Medical Specialties (ABMS)] or board certified in neurological surgery, neurology, physical medicine and rehabilitation, orthopaedic surgery, preventative medicine/occupational-environmental medicine, or preventative medicine/occupational by the [American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS)].

A review of the record reveals that Dr. G is a doctor of chiropractic and there was no evidence that he is board certified in any of the specialties enumerated in Rule 127.130(b)(8)(B).

Section 408.0041 provides, in part, that an employee may request and the Division may order a medical examination to resolve questions regarding the impairment caused by the compensable injury, the attainment of MMI and the extent of the employee's compensable injury. We hold that under the facts of this case, the parties should receive the benefit of an impartial examination by a qualified designated doctor as contemplated by Sections 408.0041 and 408.0043 and Rule 127.130(b)(8)(B).

Accordingly, we reverse the hearing officer's determination that the compensable injury does not extend to aggravation of T3 through T7 herniations with nerve root irritation and cauda equina-like syndrome and we remand the issue of extent of injury for the appointment of another designated doctor.

MMI/IR

Given that we have reversed the hearing officer's extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer's determinations that the claimant reached MMI on April 29, 2016, and that the claimant's IR is zero percent, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

DISABILITY

Given that we have reversed the hearing officer's extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer's determination that the claimant had disability from January 12 through July 17, 2016, due to the injury of (date of injury), but not thereafter through the date of the CCH and we remand the issue of disability to the hearing officer to make a determination consistent with this decision.

SUMMARY

We reverse the hearing officer's determination that the compensable injury does not extend to aggravation of T3 through T7 herniations with nerve root irritation and cauda equina-like syndrome and we remand the issue of extent of injury for further action consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on April 29, 2016, and that the claimant's IR is zero percent, and we remand the issues of MMI/IR to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant had disability from January 12 through July 17, 2016, due to the injury of (date of injury), but not thereafter through the date of the CCH and we remand the issue of disability to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to cause a designated doctor qualified to examine spinal cord injuries to be appointed to address the issue of extent of injury.

The hearing officer is to advise the newly appointed designated doctor that the compensable injury includes a lumbar strain and contusion and shall request that the designated doctor examine the claimant and opine regarding whether the compensable injury of (date of injury), extends to aggravation of T3 through T7 herniations with nerve root irritation and cauda equina-like syndrome.

The hearing officer is to request from the designated doctor a certification of MMI and IR with regard to the accepted compensable injury and an alternate certification of MMI/IR with regard to the accepted compensable injury and the disputed extent-of-injury condition of aggravation of T3 through T7 herniations with nerve root irritation and cauda equina-like syndrome. The hearing officer is to ensure that the designated doctor has all the pertinent medical records to determine extent of injury, MMI and IR. After the designated doctor examines the claimant and submits his reports, the parties are to be provided with the Designated Doctor Examination Data Report (DWC-68), the DWC-69s and narratives and are to be allowed an opportunity to respond. The hearing officer is to make determinations which are supported by the evidence on extent of injury, MMI, IR and disability for the period from January 12, 2016, through the date of the CCH 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge