APPEAL NO. 171412
FILED AUGUST 1, 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 was held on May 3, 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 lumbar spine herniated nucleus pulposus (HNP) at L4-5, lumbar radiculopathy, lumbar radiculitis, lumbar disc displacement, impingement of the L5 nerve root, or impingement of the L4 nerve root; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 21, 2016; and (3) the claimant's impairment rating (IR) is five percent.

The claimant appealed the hearing officer's determination concerning extent of the compensable injury as being against the great weight and preponderance of the evidence and argues further that the certification of MMI and IR adopted by the hearing officer is invalid as it does not rate all of the compensable injuries. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), in the form of a lumbar sprain/strain. The claimant testified that he was injured when he tripped and fell backwards onto a pallet.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to the lumbar spine HNP at L4-5, lumbar radiculopathy, lumbar radiculitis, lumbar disc displacement, impingement of the L5 nerve root, or impingement of the L4 nerve root 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.

(Dr. Pa), the designated doctor appointed by the Division to address MMI, IR, extent of injury, disability and ability to return to work, certified that the claimant reached MMI on December 7, 2015, 3 days following the date of injury, with a five percent IR. The hearing officer's Finding of Fact No. 4 that Dr. Pa's certification of MMI and assignment of IR is contrary to the preponderance of the other medical evidence is supported by sufficient evidence and is affirmed.

The hearing officer, instead, found the alternate certification dated March 3, 2017, from (Dr. Pe), a referral of the treating doctor, to be persuasive. In his report, Dr. Pe certified MMI on May 21, 2016, the date of the claimant's epidural steroid injection and last date of active care. Dr. Pe assigned an IR of five percent pursuant to Table 72, Lumbosacral Diagnosis-Related Estimate (DRE) Category II for the lumbar sprain/strain using 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). Dr. Pe's IR cannot be adopted, however, because his Report of Medical Evaluation (DWC-69) was not signed. The reporting requirements of Rule 130.1(d)(1) provide that certification of MMI and assigning IR for the current compensable injury requires "completion, signing and submission of the [DWC-69] and a narrative report." Rule 130.1(d)(1)(A) states that the DWC-69 "must be signed by the certifying doctor." That rule goes on to state the signature may be "a rubber stamp signature or an electronic facsimile signature." *See* Appeals Panel Decision (APD) 042044-s, decided October 8, 2004, APD 061017, decided July 14, 2006, and APD 931106, decided January 11, 1994.

There is no other certification of MMI/IR in evidence that considers only the lumbar sprain/strain accepted by the carrier and determined by the hearing officer to be the extent of the compensable injury of (date of injury). (Dr. B), the carrier's choice of physician, examined the claimant on February 7, 2017, and, like Dr. Pe, certified that the claimant reached MMI on May 21, 2016, with an IR of five percent pursuant to DRE Category II; however, Dr. B's certification of MMI/IR cannot be adopted because he

evaluated and rated a lumbar contusion rather than a lumbar sprain/strain and, therefore, did not rate the compensable injury.

Because there is no certification 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 the lumbar spine HNP at L4-5, lumbar radiculopathy, lumbar radiculitis, lumbar disc displacement, impingement of the L5 nerve root, or impingement of the L4 nerve root.

We reverse the hearing officer's determination that the claimant reached MMI on May 21, 2016, and remand the issue of MMI to the hearing officer.

We reverse the hearing officer's determination that the claimant's IR is five percent and remand the issue of IR to the hearing officer.

REMAND INSTRUCTIONS

Dr. Pa is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. Pa is still qualified and available to be the designated doctor. If Dr. Pa is no longer qualified or is not 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 lumbar sprain/strain.

The hearing officer is to inform the designated doctor that the compensable injury of (date of injury), extends to a lumbar sprain/strain but does not include the lumbar spine HNP at L4-5, lumbar radiculopathy, lumbar radiculitis, lumbar disc displacement, impingement of the L5 nerve root, or impingement of the L4 nerve root.

The hearing officer is to request that the designated doctor provide a certification of MMI and assignment of IR for the compensable lumbar sprain/strain in accordance with Rule 130.1(c)(3) and the AMA Guides.

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/IR consistent with the evidence and 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 **SENTRY INSURANCE A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge