APPEAL NO. 180113
FILED FEBRUARY 22, 2018

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 December 12, 2017, in (city), Texas, with (ALJ) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to an L5-S1 disc bulge, sciatica, thoracic sprain/strain, or aggravation of degenerative disc disease; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 16, 2017; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which extends to at least a lumbar sprain/strain, left knee contusion/sprain, right ankle strain, SI joint sprain, muscle spasm of back, and pelvis sprain/strain. The claimant testified she was injured when she slipped and fell on a wet floor.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), does not extend to an L5-S1 disc bulge, sciatica, thoracic sprain/strain, or aggravation of degenerative disc disease 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 in pertinent part that the assignment of an IR shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The ALJ determined that the preponderance of the other medical evidence is not contrary to the opinion of (Dr. W), the designated doctor, that the claimant reached MMI on February 16, 2017, with a zero percent IR. Dr. W examined the claimant on August 9, 2017, and provided three Reports of Medical Evaluation (DWC-69), all of which certified that the claimant reached MMI on February 16, 2017, with a zero percent IR. As previously mentioned the parties stipulated at the CCH that the compensable injury extends to, in part, a left knee sprain and SI joint sprain. Although Dr. W discusses a left knee contusion in his narrative report, Dr. W did not consider or rate a left knee sprain. Dr. W also did not consider or rate SI joint sprain. Additionally, Dr. W stated in his narrative report that he assigned zero percent impairment for the claimant's left ankle. As previously mentioned the parties stipulated that the compensable injury extends to a right ankle strain. Dr. W did not consider and rate the entire compensable injury, and as such none of his MMI/IR certifications can be adopted. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on February 16, 2017, with a zero percent IR.

There is one other MMI/IR certification in evidence, which is from (Dr. H), a doctor acting in place of the treating doctor. Dr. H examined the claimant on June 14, 2017, and certified that the claimant reached MMI on June 14, 2017, with a five percent IR. However, Dr. H did not consider and rate the entire compensable injury; therefore, his MMI/IR certification cannot be adopted.

There is no MMI/IR certification in evidence that can be adopted. Accordingly, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that that the compensable injury of (date of injury), does not extend to an L5-S1 disc bulge, sciatica, thoracic sprain/strain, or aggravation of degenerative disc disease.

We reverse the ALJ's determination that the claimant reached MMI on February 16, 2017, and we remand the issue of MMI to the ALJ for further action consistent with this decision.

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

REMAND INSTRUCTIONS

Dr. W is the designated doctor in this case. On remand the ALJ is to determine whether Dr. W is still qualified and available to be the designated doctor. If Dr. W is still qualified and available to serve as the designated doctor, the ALJ is to clarify that the compensable injury extends to the right ankle, not the left ankle as noted in Dr. W's narrative report.

If Dr. W is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine whether the claimant has reached MMI, and if so to assign an IR 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).

The ALJ is to advise the designated doctor that the compensable injury of (date of injury), extends to a lumbar sprain/strain, left knee contusion/sprain, right ankle strain, SI joint sprain, muscle spasm of back, and pelvis sprain/strain. The ALJ is also to advise the designated doctor that the (date of injury), compensable injury does not extend to an L5-S1 disc bulge, sciatica, thoracic sprain/strain, or aggravation of degenerative disc disease.

If the designated doctor finds the claimant to be at MMI for the compensable injury, the certification of MMI should be 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 considering the physical examination and the claimant's medical records. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the AMA Guides and the provisions of Rule 130.1(c)(3).

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 ALJ is then to make a determination on the claimant's MMI and IR for the (date of injury), compensable injury.

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 ALJ, 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 **AMARILLO INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

DANA WEST, SUPERINTENDENT
7200 INTERSTATE 40 WEST
AMARILLO, TEXAS 79106.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge