

APPEAL NO. 180432
FILED APRIL 10, 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 was held on November 28, 2017, with the record closing on January 19, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on February 28, 2017; and (2) the claimant's impairment rating (IR) is 3%. The claimant appealed, disputing the ALJ's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of a cervical disc herniation at C5-6, right shoulder rotator cuff tear, thoracic strain, left shoulder strain, and low back strain. The claimant testified that she was injured when she fell off of a box truck.

The ALJ determined that the claimant reached MMI on February 28, 2017, with a 3% IR as certified by (Dr. L), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) 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. L examined the claimant on April 7, 2017, and certified that the claimant reached MMI on February 28, 2017, and assessed a 3% IR for loss of range of motion of the claimant's right shoulder. Dr. L assessed zero percent impairment for the claimant's lumbar spine, thoracic spine, cervical spine, and left shoulder. However, in evidence is the Report of Medical Evaluation (DWC-69) from Dr. L and it does not contain the certifying doctor's signature. 28 TEX. ADMIN. CODE § 130.1(d)(1) (Rule 130.1(d)(1)) provides that a certification of MMI and assignment of an IR for the compensable injury requires the "completion, signing, and submission of the [DWC-69] and a narrative report." See Appeals Panel Decision (APD) 100510, decided June 24, 2010; APD 101734, decided January 27, 2011; and APD 141332, decided August 11, 2014. There are no other DWC-69s in evidence from Dr. L. Because the DWC-69 was not signed by Dr. L, it was error for the ALJ to adopt his certification. Consequently, we reverse the ALJ's determinations that the claimant's MMI date is February 28, 2017, and that the claimant's IR is 3%.

The only other certification of MMI/IR in evidence is from (Dr. K), the referral doctor. Dr. K certified that the claimant reached MMI on March 27, 2017, with a 20% IR. Dr. K considered and rated a cervical herniated disc, thoracic herniated disc, and right shoulder rotator cuff tear. As previously noted the parties stipulated that the compensable injury includes a cervical disc herniation at C5-6, right shoulder rotator cuff tear, thoracic strain, left shoulder strain, and low back strain. Dr. K did not consider or rate the claimant's left shoulder strain or low back strain. Further, Dr. K rated a thoracic herniated disc rather than a thoracic strain. Because Dr. K did not rate the entire compensable injury and rated a condition not yet determined to be part of the compensable injury his certification of MMI/IR cannot be adopted.

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

SUMMARY

We reverse the ALJ's determinations that the claimant's MMI date is February 28, 2017, and that the claimant's IR is 3%, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. L is the designated doctor in this case. The ALJ is to determine whether Dr. L is still qualified and available to be the designated doctor. If Dr. L 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.

The ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to a cervical disc herniation at C5-6, right shoulder rotator cuff tear, thoracic strain, left shoulder strain, and low back strain. The ALJ 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 ALJ is to inform the designated doctor that the certification of MMI/IR requires completion, signing, and submission of the DWC-69 and a narrative report pursuant to Rule 130.1(d)(1).

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 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 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANIES** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge