

APPEAL NO. 180778
FILED MAY 30, 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 February 13, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by determining that: (1) the compensable injury of (date of injury), does not extend to lower extremity complex regional pain syndrome/reflex sympathetic dystrophy (CRPS/RSD), left knee internal derangement, left knee tendonitis, left knee patellofemoral pain syndrome, lower extremity muscle imbalance, left knee post-traumatic arthritic degeneration, scar tissue in the anterior medial left knee, or an injury to the right knee; (2) the respondent/cross-appellant (claimant) reached maximum medical improvement (MMI) on January 5, 2018; and (3) the claimant's impairment rating (IR) is one percent.

The appellant/cross-respondent (carrier) appealed, disputing the ALJ's MMI and IR determinations. The claimant, in an untimely cross-appeal, disputed the ALJ's extent-of-injury determination. The carrier responded to the claimant's cross-appeal, urging affirmance of the ALJ's extent-of-injury determination. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Reformed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a left knee medial meniscus tear, and that the statutory date of MMI in this case is January 5, 2018. The claimant testified she was injured when she slipped on ice and fell.

The stipulation in Finding of Fact No. 1.F. states that (Dr. C) is an M.D. However, the parties stipulated and the record reveals that Dr. C is a D.C. We reform Finding of Fact No. 1.F. to identify Dr. C as a D.C.

UNTIMELY CROSS-APPEAL

The deemed date of the claimant's receipt of the ALJ's decision was March 12, 2018, and a timely appeal must have been filed no later than Tuesday, April 3, 2018. We note that March 30, 2018, Good Friday, is a holiday listed in Government Code Section 662.003, and that date was excluded in the computation of the time period to file an appeal. Although the claimant's cross-appeal is dated March 22, 2018, the claimant's cross-appeal was sent to and received by the Texas Department of

Insurance, Division of Workers' Compensation (Division) on April 6, 2018. The appeal file does not contain another copy of the appeal sent to the Division. Accordingly, the claimant's cross-appeal, having not been filed or mailed by April 3, 2018, is untimely as a cross-appeal. See 28 TEX. ADMIN. CODE §§§§ 143.3(d), 102.5(d), 102.3(a)(3), and 102.3(b) (Rules 143.3(d), 102.5(d), 102.3(a)(3), and 102.3(b)).

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 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. 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.

The ALJ determined that the claimant reached MMI on January 5, 2018, with a one percent IR as determined by (Dr. L), a subsequently appointed designated doctor. Dr. L examined the claimant on January 12, 2018. Dr. L certified the claimant reached MMI on January 5, 2018, and, 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), assigned a one percent IR. In his attached narrative report Dr. L stated that the claimant's "post-surgical scarring is causing significant pain and dysfunction in the left knee," and that "[s]urgical intervention is necessary in this case for diagnosis and treatment as indicated," and therefore opined that the claimant's date of MMI is January 5, 2018, the statutory date of MMI. As noted above the ALJ's determination that the compensable injury does not extend to scar tissue in the anterior medial left knee was not timely appealed and has become final. Dr. L based his MMI/IR certification on a condition that has been determined to be not compensable, and as such it cannot be adopted.

Dr. L also included two alternate MMI/IR certifications; however, neither of these certifications consider and rate the compensable injury. As noted above, the

compensable injury in this case is a left knee medial meniscus tear. The first MMI/IR certification considers and rates, among other things, CRPS/RSD and scar tissue in the anterior medial knee. The second MMI/IR certification considers and rates, among other things, scar tissue in the anterior medial knee. None of Dr. L's MMI/IR certifications can be adopted. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on January 5, 2018, with a one percent IR.

There are other MMI/IR certifications in evidence; however, none of these consider and rate the compensable injury. Dr. C, the first designated doctor, examined the claimant on January 17, 2017, and certified that the claimant reached MMI on January 17, 2017, with a one percent IR. However, Dr. C's narrative report shows that Dr. C considered a left knee anterior fat pad impingement, which is a condition that has not been determined compensable. (Dr. Cm), a referral doctor, examined the claimant on September 26, 2017, and certified on October 4, 2017, that the claimant had not reached MMI. Dr. Cm's narrative report shows that Dr. Cm considered and rated, among other things, scar tissue in the anterior medial knee. Additionally, the parties have stipulated that the date of statutory MMI is January 5, 2018. Finally, (Dr. G), a post-designated doctor required medical examination doctor, examined the claimant on December 14, 2017, and certified that the claimant reached MMI on January 17, 2017, with a one percent IR. Dr. G stated in his narrative report that he agreed with Dr. C's certification of MMI and IR, which considered and rated a left knee anterior fat pad impingement.

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 reform Finding of Fact No. 1.F. to identify Dr. C as a D.C.

We reverse the ALJ's determination that the claimant reached MMI on January 5, 2018, 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 one percent, and we remand the issue of the claimant's IR for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. L is the designated doctor in this case. On remand 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 date of MMI, which cannot be after January 5, 2018, the statutory date of MMI, and IR for the (date of injury), compensable injury.

The ALJ is to advise the designated doctor that the compensable injury of (date of injury), extends to a left knee medial meniscus tear. The ALJ is also to advise the designated doctor that the compensable injury of (date of injury), does not extend to lower extremity CRPS/RSD, left knee internal derangement, left knee tendonitis, left knee patellofemoral pain syndrome, lower extremity muscle imbalance, left knee post-traumatic arthritic degeneration, scar tissue in the anterior medial left knee, or an injury to the right knee. The ALJ is to further advise the designated doctor that the date of statutory MMI in this case is January 5, 2018.

The parties are to be provided with the designated doctor's new MMI/IR certification and 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 **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge