APPEAL NO. 181162
FILED JULY 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 (CCH) was held on April 18, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 10%. The claimant appealed, disputing the ALJ's determination of the IR. The respondent (self-insured) responded, urging affirmance of the disputed IR determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that: the claimant sustained a compensable injury on (date of injury); the compensable injury extends to include a compression fracture at L1; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. F) as designated doctor for purposes of maximum medical improvement (MMI) and IR. The Benefit Review Conference (BRC) Report in evidence reflects that the parties agreed that the claimant reached MMI on April 27, 2017. However, at the CCH, the parties agreed that the BRC Report was inaccurate and the parties agreed that the claimant reached MMI on April 24, 2017.

The claimant in her appeal contends she is not at MMI. However, we note that MMI was not an issue in dispute and that the parties agreed on the record at the CCH that the claimant reached MMI on April 24, 2017. Section 410.166 provides, in pertinent part, that an oral stipulation of the parties that is preserved in the record is final and binding.

The ALJ determined that the claimant's IR is 10% as certified by (Dr. D), a carrier-selected required medical examination doctor, 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. D examined the claimant on January 23, 2018, and certified that the claimant reached MMI on April 24, 2017, and assessed a 10% IR placing the claimant in Lumbosacral Diagnosis-Related Estimate (DRE) Category III: Radiculopathy of the AMA Guides due to structural inclusions based on a L1 compression fracture that has 50% compression. However, in evidence is the Report of Medical Evaluation (DWC-69) from Dr. D 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. Because the DWC-69 was not signed by Dr. D, it was error for the ALJ to adopt his certification. Consequently, we reverse the ALJ's determination that the claimant's IR is 10%.

There are two other certifications of MMI/IR in evidence. (Dr. G), a referral doctor, examined the claimant on June 20, 2017, and certified that the claimant reached MMI on May 1, 2017, with a 10% IR. As previously noted the parties agreed on the record at the CCH that the claimant reached MMI on April 24, 2017. Dr. G's certification cannot be adopted because it is based on an incorrect MMI date.

The other certification of MMI/IR is from Dr. F, the designated doctor. Dr. F examined the claimant on September 26, 2017, and certified that the claimant reached MMI on April 24, 2017, with a 20% IR. As justification for his assignment of impairment Dr. F stated that, "[m]ultilevel fusion meets the criteria for DRE Category IV, [s]tructural [i]nclusions, as this multilevel fusion is equivalent to 'multilevel spine segment structural compromise' per DRE IV." The AMA Guides provides on page 3/102 that for Lumbosacral DRE Category IV: Loss of Motion Segment Integrity for structural inclusions: (1) greater than 50% compression of one vertebral body without residual neurologic compromise; (2) multilevel spine segment structural compromise, as with fractures or dislocations, without residual neurologic motor compromise. In his narrative report, Dr. F did not document that the claimant had a greater than 50% compression of one vertebral body without residual neurologic compromise. The self-insured argued that Dr. F based his assignment of impairment on Advisory 2003-10, signed July 22, 2003, and Advisory 2003-10B, signed February 24, 2004. We note that Advisories 2003-10 and 2003-10B were declared invalid as a result of the decision in *Texas Dep't. of Ins. v. Lumbermens Mutual Cas. Co.*, 212 S.W.3d 870 (Tex. App.-Austin, 2006, pet. denied). *See* APD 071023-s, decided July 23, 2007. The ALJ found that the IR of Dr. F was not performed in accordance with the AMA Guides and the preponderance of the other medical evidence is contrary to Dr. F's assignment of a 20% IR. Those findings are supported by sufficient evidence and are affirmed.

As there is no assigned IR in evidence that can be adopted, we remand the issue of IR to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the claimant's IR is 10%, and we remand the issue of IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

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

The ALJ is to inform the designated doctor that the claimant's MMI date is April 24, 2017. Further, the ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to compression fracture at L1. The ALJ is to request the designated doctor rate the entire compensable injury in accordance with the criteria specified in the AMA Guides considering the medical record and the certifying examination and that Advisories 2003-10 and 2003-10B were declared invalid in *Lumbermens, supra. See* APD 071023-s, *supra*.

The parties are to be provided with the designated doctor's new IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination on 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 **ALDINE INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

DR. WANDA BAMBERG, SUPERINTENDENT
2520 W. W. THORNE BOULEVARD
HOUSTON, TEXAS 77073.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge