

APPEAL NO. 181942
FILED OCTOBER 12, 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 August 1, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the sole disputed issue by deciding that the respondent's (claimant) impairment rating (IR) is 16%. The appellant (carrier) appealed the ALJ's determination, contending that the 16% IR assigned by (Dr. P), the designated doctor, does not comply 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) (AMA Guides) and cannot be adopted. The claimant responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), the carrier has accepted a left hand and left wrist open wound as the compensable injury, and that the date of maximum medical improvement (MMI) is April 12, 2017. The claimant testified he was injured when a hydraulic hose blew and pressure of 5000 psi from the hose cut open his left hand and injected hydraulic fluid into the wound.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (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.

As noted above the parties stipulated that the date of MMI in this case is April 12, 2017. The ALJ determined that the claimant's IR is 16% as assigned by Dr. P.

Dr. P examined the claimant on December 16, 2017, and certified on December 27, 2017, that the claimant reached MMI on April 12, 2017, with a 16% IR using the

AMA Guides based on both loss of range of motion (ROM) and sensory loss of the left thumb, index, and middle fingers. Dr. P explained in his narrative report that he assigned 0% impairment for the left wrist and 30% hand impairment for the left hand, which converts to 27% upper extremity impairment, which converts to 16% whole person impairment.

Dr. P assigned 30% digit impairment for the left thumb (6% impairment for loss of ROM and 25% digit impairment for “partial sensation loss of the entire palmer (sic) surface from the MP joint distally”), 54% digit impairment for the left index finger (38% impairment for loss of ROM and 25% digit impairment for “partial sensation loss of the entire palmer (sic) surface from the MP joint distally”), and 37% digit impairment for the left middle finger (16% impairment for loss of ROM and 25% digit impairment based on “partial sensation loss of the entire palmer (sic) surface from the MP joint distally”). We note that Dr. P correctly applied the AMA Guides regarding ROM of the claimant’s left wrist, left thumb, and left index and middle fingers.

In Appeals Panel Decision (APD) 111384, decided November 23, 2011, the certifying doctor did not follow the steps for evaluating impairment of the upper extremity found on page 3/66 of the AMA Guides, in part, because the certifying doctor in rating a sensory loss of a digit did not indicate whether the two-point discrimination findings were normal or abnormal. The Appeals Panel stated that to calculate the claimant’s upper extremity impairment there must be a calculation of impairment for the digits/hand according to the AMA Guides, and without which, there is no adoptable IR. APD 122159, decided December 11, 2012, held that a certifying doctor rating sensory loss of a digit who fails to document the findings of the two-point discrimination test has not assigned an IR in accordance with the AMA Guides. In the case on appeal Dr. P’s narrative report did not document any findings of a two-point discrimination test or even mention if such a test was performed, which is required by the AMA Guides to assign an impairment for sensory loss of the digits. Dr. P did not assign an IR in accordance with the AMA Guides. Accordingly, we reverse the ALJ’s determination that the claimant’s IR is 16%.

The only other MMI/IR certification in evidence is from (Dr. I), the post-designated doctor required medical examination doctor. Dr. I examined the claimant on February 22, 2018, and certified on that date that the claimant reached MMI on the stipulated date of April 12, 2017, with a 7% IR based on the compensable injury. Dr. I noted in his narrative report that he used ROM measurements taken by Dr. P on December 16, 2017, to assess a 7% IR. Although Dr. I performed a two-point discrimination test in his February 22, 2018, examination, he did not use the results of that two-point discrimination test in assessing his 7% IR. In his narrative report Dr. I referenced records from an occupational therapist on March 27, 2017, and from the

treating doctor's office on April 12, 2017, to explain why he did not assess impairment for sensory loss. It is unclear from the records relied upon by Dr. I in assessing his 7% IR that a two-point discrimination test was performed on the claimant and was considered in assessing an IR for the compensable injury. As discussed above, the AMA Guides requires documentation of two-point discrimination test findings when assigning an IR for sensory loss of a digit.

Under the circumstances of this case we do not find it appropriate to render a new decision regarding the claimant's IR. Accordingly, we remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

As discussed above it is unclear whether a two-point discrimination test was performed on the claimant and considered in assessing the claimant's IR, a test which the AMA Guides requires for assessing an impairment for sensory loss of a digit.

Dr. P is the designated doctor in this case. If necessary, on remand the ALJ is to determine whether Dr. P is still qualified and available to be the designated doctor. If Dr. P is no longer qualified or available to serve as the designated doctor and it is necessary for the ALJ to obtain a new MMI/IR certification, then another designated doctor is to be appointed to determine the claimant's IR for the (date of injury), compensable injury based upon the April 12, 2017, MMI date.

The ALJ is to notify the designated doctor that the (date of injury), compensable injury is a left hand and left wrist open wound, and that the date of MMI is April 12, 2017. The ALJ is also to notify the designated doctor that the AMA Guides requires documentation of two-point discrimination test findings when assigning an IR for sensory loss of a digit. The parties are to be provided with any new MMI/IR certification from the designated doctor and are to be allowed an opportunity to respond.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge