APPEAL NO. 182362
FILED DECEMBER 27, 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 September 12, 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 compensable injury of (date of injury), does not extend to L1-2, L4-5, L5-S1 diffuse lumbar disc bulges resulting in moderate narrowing without spinal canal stenosis, T4-5 central thoracic disc protrusion, C5-6, C6-7 mild disc osteophytes with uncovertebral hypertrophy resulting in mild spinal degenerative disc disease, cervical disc disorder with radiculopathy, cervical radiculopathy, thoracic radiculopathy, lumbar radiculopathy, or peripheral neuropathy; (2) the respondent (claimant) reached maximum medical improvement (MMI) on April 4, 2018; and (3) the claimant's impairment rating (IR) is 15%.

The appellant (carrier) appealed the ALJ's MMI and IR determinations, contending that (Dr. W), the designated doctor, did not have all the medical records to determine the claimant's MMI and IR. The claimant responded, urging affirmance of the ALJ's MMI and IR determinations. The ALJ's determination that the compensable injury of (date of injury), does not extend to L1-2, L4-5, L5-S1 diffuse lumbar disc bulges resulting in moderate narrowing without spinal canal stenosis, T4-5 central thoracic disc protrusion, C5-6, C6-7 mild disc osteophytes with uncovertebral hypertrophy resulting in mild spinal degenerative disc disease, cervical disc disorder with radiculopathy, cervical radiculopathy, thoracic radiculopathy, lumbar radiculopathy, or peripheral neuropathy was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least a lumbar sprain, lumbar strain, thoracic sprain, thoracic strain, cervical sprain, and cervical strain, and that September 12, 2019, is the statutory date of MMI. We note that the stipulation contained in Finding of Fact No. 1.A. states venue is proper in the (city) Field Office of the Texas Department of Insurance, Division of Workers' Compensation (Division) although the parties actually stipulated, and the record established, that venue is proper in the (city) Field Office of the Division. The claimant testified that he was injured when he slipped and fell.

**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. 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.

The ALJ determined that the claimant reached MMI on April 4, 2018, with a 15% IR as certified by Dr. W, the Division-appointed designated doctor. The carrier argued that Dr. W did not have all the medical records to determine the claimant's MMI and IR. Specifically, the carrier argued Dr. W did not receive records from (Dr. E), a neurologist who had examined the claimant prior to Dr. W's examination.

Dr. W examined the claimant on April 4, 2018, and certified on that date that the claimant reached MMI on April 4, 2018. 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. W assigned 15% impairment for the claimant's lumbar sprain, lumbar strain, thoracic sprain, thoracic strain, cervical sprain, and cervical strain. In his attached narrative report, Dr. W noted records dated September 8, 2017, from (Dr. S); MRIs of the claimant's lumbar, cervical, and thoracic spine dated November 22, 2017; and records from Dr. S dated February 16, 2018.

In evidence are records from Dr. E dated January 29, 2018, and February 28, 2018. Also in evidence is a record from (Dr. O), who examined the claimant on January 8, 2018. Dr. W does not mention any records from Dr. E or Dr. O in his narrative report.

Rules 130.1(b)(4)(A) and 130.1(c)(3) specifically require that the certifying doctor, including the designated doctor, review the medical records before certifying an MMI date and assigning an IR. In Appeals Panel Decision (APD) 062068, decided December 4, 2006, the Appeals Panel held that the 1989 Act and the Division rules require that the designated doctor conduct an examination of the claimant and review

the claimant's medical records. *See also* APD 130187, decided March 18, 2013, in which the designated doctor did not have the post-operative physical therapy medical records prior to making his first MMI/IR certification; therefore, his certification of MMI and IR could not be adopted. Rule 127.10(a)(1) provides, in part, that the treating doctor and insurance carrier shall provide to the designated doctor copies of all the injured employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor. For subsequent examinations with the same designated doctor, only those medical records not previously sent must be provided. *See also* APD 112010, decided March 2, 2012.

In the case on appeal, it is clear that Dr. W did not have all the medical records to determine the claimant's MMI and IR as required by Rule 127.10. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on April 4, 2018, with a 15% IR, and we remand the issues of MMI and 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 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 for the compensable injury of (date of injury). On remand, the ALJ should ensure that the designated doctor be forwarded the claimant's medical records that were not provided to the designated doctor, which include the medical reports from Dr. E and Dr. O, to determine the claimant's MMI and IR.

The ALJ is to advise the designated doctor that the compensable injury of (date of injury), extends to a lumbar sprain, lumbar strain, thoracic sprain, thoracic strain, cervical sprain, and cervical strain. The ALJ is also to advise the designated doctor that the compensable injury of (date of injury), does not extend to L1-2, L4-5, L5-S1 diffuse lumbar disc bulges resulting in moderate narrowing without spinal canal stenosis, T4-5 central thoracic disc protrusion, C5-6, C6-7 mild disc osteophytes with uncovertebral hypertrophy resulting in mild spinal degenerative disc disease, cervical disc disorder with radiculopathy, cervical radiculopathy, thoracic radiculopathy, lumbar radiculopathy, or peripheral neuropathy.

The ALJ is to request that the designated doctor rate the entire compensable injury, considering the claimant's medical record and the certifying examination and in accordance with Rule 130.1(c)(3).

The parties are to be provided with the ALJ's letter to the designated doctor and the designated doctor's response. The parties are to be allowed an opportunity to respond. The ALJ is then to make a determination on MMI and IR supported by the evidence and 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 COMPANY** and the name and address of its registered agent for service of process is

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

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge