

APPEAL NO. 191777
NOVEMBER 20, 2019

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 June 6, 2019, with the record closing on August 23, 2019, 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 a labral tear in the right hip; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 4, 2018; and (3) the claimant's impairment rating (IR) is eight percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Reversed and remanded.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. The file contains two recordings of the CCH conducted on June 6, 2019. The first recording is 49 minutes and 25 seconds in length. The second recording begins where the first recording ended. The second recording is 22 minutes and 49 seconds in length. However, the second recording ends abruptly during the redirect examination of (Dr. G). The file does not contain a transcript or a complete audio recording of the proceeding. Consequently, we reverse and remand this case to the ALJ who presided over the June 6, 2019, CCH, if possible, for reconstruction of the CCH record. See Appeals Panel Decision (APD) 181019, decided June 13, 2018.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for reconstruction of the record, we have reviewed the audio recordings of the June 6, 2019, CCH, the documentary evidence, the ALJ's decision, the appeal, and the response with regard to the issues in dispute. We note that in evidence is the certification of MMI and assessment of IR from the designated doctor which was adopted by the ALJ in this case. The IR is based on loss of range of motion (ROM) of the right hip. The narrative from the designated doctor includes ROM measurements taken on August 4, 2018, as follows: flexion 110°; extension 5°; abduction 20°; adduction 10°; internal rotation 10°; and external rotation 25°. The table in the designated doctor's narrative includes external rotation twice and appears to assess two percent impairment for each external rotation entry. Additionally, the table in the designated doctor's narrative assesses zero percent for the measurements of abduction and adduction even though Table 40 of 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), page 3/78 assesses two percent impairment each for the claimant's ROM measurements as noted in the designated doctor's narrative for abduction and adduction. Further, the designated doctor assesses four percent impairment for loss of ROM for internal rotation of 10°. Table 40 provides that loss of ROM of 10° for internal rotation would result in two percent impairment.

We remand the case to the ALJ for a reconstruction of the record and to ask for clarification from the designated doctor regarding the calculation of his IR. The ALJ is to make the response of the designated doctor available to the parties for comment and argument. After giving the parties an opportunity to respond the ALJ will review the record and issue a new decision and order.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **KATY INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**KENNETH GREGORSKI, SUPERINTENDENT
6301 S. STADIUM LANE
KATY, TEXAS 77494.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge