

APPEAL NO. 201379
FILED NOVEMBER 24, 2020

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 July 29, 2020, with the record closing on August 18, 2020, 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 respondent (claimant) reached maximum medical improvement (MMI) on November 11, 2019; and (2) the claimant's impairment rating (IR) is 28%. The appellant (carrier) appealed the ALJ's determinations. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury in the form of fracture of the right second metatarsal bone of the right foot and fracture of the third metatarsal bone of the right foot when his foot was crushed on (date of injury); that the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI and IR was (Dr. H); and the date of statutory MMI is November 11, 2019. The evidence established that the claimant was injured on (date of injury), when a backhoe bucket crushed his right foot.

The ALJ noted in Issue Statement 1 that the date of MMI was "[r]esolved by stipulation." The ALJ stated in the discussion portion of the decision that "[t]he parties agreed that [the] [c]laimant's date of MMI was the statutory MMI date of November 11, 2019, as certified by the Division-selected designated doctor, [Dr. H], and required medical examination (RME) doctor, [(Dr. G)]." The carrier contends on appeal that the parties made no such stipulation at the CCH, and points out there is a third MMI/IR certification in evidence that certified a different date of MMI from that of Dr. H and Dr. G. A review of the record reflects that the parties did not make any stipulation at the CCH regarding the date the claimant reached MMI, nor does the record contain any written agreement made by the parties regarding the date of MMI. The ALJ based his determination that the claimant reached MMI on November 11, 2019, on his belief that the parties had stipulated the claimant's date of MMI was the statutory MMI date of November 11, 2019. The ALJ's statement that the parties agreed that the claimant's date of MMI was the statutory date of November 11, 2019, is a material misstatement of the evidence. Accordingly, we reverse the ALJ's determination that the claimant reached MMI on November 11, 2019, and we remand the MMI issue to the ALJ for further action consistent with this decision.

28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in part, that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition on the MMI date considering the medical record and the certifying examination. Because we have reversed the ALJ's MMI determination and remanded the MMI issue to the ALJ, we reverse the ALJ's determination that the claimant's IR is 28% and we remand the IR issue to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the claimant reached MMI on November 11, 2019, and we remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 28% and we remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of the evidence. The ALJ shall consider all of the evidence and make determinations on the issues of MMI and IR.

We note the stipulation in Finding of Fact No. 1.C. misspells the carrier's name. Additionally, the decision incorrectly states that no witnesses testified for the carrier at the CCH, when in fact Dr. G testified for the carrier. Also, the decision does not include (Dr. F) as testifying for the claimant despite Dr. F testifying at length for the claimant. Finally, the decision states that the claimant testified at the CCH, but the record reflects that the claimant was not placed under oath and did not specifically offer testimony. On remand the ALJ should correct Finding of Fact No. 1.C. and note that Dr. G testified for the carrier, Dr. F testified for the claimant, and that the claimant did not testify.

Dr. H is the designated doctor in this case. If necessary, on remand the ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H 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 MMI and IR for the (date of injury), compensable injury. The parties are to be provided with the designated doctor's new certification of MMI and IR if needed and are to be allowed an opportunity to respond. The ALJ is then to make determinations on MMI and 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, CEO
6907 N. CAPITAL OF TEXAS HIGHWAY
AUSTIN, TEXAS 78731.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge