APPEAL NO. 220907
FILED JULY 22, 2022

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 April 20, 2022, 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 appellant (claimant) reached maximum medical improvement (MMI) on September 29, 2020; and (2) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which extends to bilateral carpal tunnel syndrome (CTS). The record indicates that the claimant, a customer service representative for the employer, sustained injuries due to the repetitive nature of her job.

**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 Texas Department of Insurance, Division of Workers' Compensation (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, in part, 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 the claimant reached MMI on September 29, 2020, with a zero percent IR as certified by (Dr. K), the designated doctor appointed by the Division to determine MMI and IR. Dr. K examined the claimant on May 18, 2021, and on that same date certified the claimant reached MMI on September 29, 2020, with a zero percent IR. Dr. K stated in her attached narrative report that the diagnosis considered was "[b]ilateral wrist pain."

On October 14, 2021, a letter of clarification (LOC) was sent to Dr. K notifying her that she did not have all the medical records for the claimant's May 18, 2021, examination. The records in question were included with the LOC, and Dr. K was requested to review the records and advise whether her certification remained the same. Dr. K responded on October 20, 2021. In her response Dr. K stated that after reviewing the additional records her opinion remained the same regarding MMI and IR. Dr. K noted "[t]he bilateral [CTS] diagnosis submitted on the [Request for Designated Doctor Examination (DWC-32)] for this exam was ruled out by EMG/NCV." Dr. K noted that the EMG/NCV performed on September 18, 2020, showed no electrical evidence for a cervical radiculopathy, no electrical evidence for any upper extremity motor sensory neuropathy, and normal needle EMG and nerve conduction study of the upper extremities. However, the compensable injury in this case, as stipulated by the parties, is bilateral CTS. Dr. K stated bilateral CTS was ruled out, and stated in her LOC response that her opinion "remains the same regarding MMI and IR." Dr. K's certification was based on bilateral wrist pain, not bilateral CTS, which is the compensable injury in this case. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on September 29, 2020, and that the claimant's IR is zero percent as certified by Dr. K.

There is one other certification in evidence, which is from (Dr. N), a referral doctor selected by the treating doctor. Dr. N examined the claimant on January 25, 2022, and certified the claimant reached MMI on June 30, 2021, with a five percent IR. Dr. N noted in his attached narrative report that in January 2021, the claimant was diagnosed with Pronator Teres Syndrome, and the claimant underwent injections with the last one being performed in June 2021. Pronator Teres Syndrome is not a condition to which the parties stipulated as being part of the compensable injury nor was it actually litigated. Dr. N's certification cannot be adopted.

There is no certification in evidence that can be adopted. Therefore, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

## REMAND INSTRUCTIONS

Dr. K is the designated doctor in this case. The ALJ is to determine whether Dr. K is still qualified and available to be the designated doctor. If Dr. K is no longer

qualified or available to serve as the designated doctor, another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury. The ALJ is to notify the designated doctor that the compensable injury in this case is bilateral CTS as stipulated to by the parties.

The ALJ is to request the designated doctor to give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance 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 considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new certification of MMI and IR and are to be allowed an opportunity to respond. The ALJ is then to make a determination 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 **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM**
**1999 BRYAN STREET SUITE 900**
**DALLAS, TEXAS 75201**.

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge