

APPEAL NO. 221016
FILED AUGUST 1, 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 May 3, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the compensable injury of (date of injury), does not extend to a lumbar disc herniation at L4-5 or L5-S1.

The appellant (claimant) appealed the ALJ's determination and argued on appeal that (Dr. M), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine the extent of the claimant's compensable injury and previously appointed to determine MMI and IR, did not have all of the medical records necessary to make his determination regarding the extent of the compensable injury. The respondent (self-insured) 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), and the self-insured accepted a cervical sprain/strain and a lumbar sprain/strain as the compensable injury. The claimant testified that she was injured on (date of injury), while working as a train operator and a vehicle turned in front of the train she was operating, resulting in a collision. The claimant testified that she felt back pain and tightness that radiated into her left leg and was transported to the hospital.

Dr. M examined the claimant to address the extent of injury on February 1, 2022. We note that medical records in evidence state that the claimant had previously sustained a lumbar injury in 2018.

The ALJ noted in the Discussion portion of her decision that Dr. M examined the claimant to determine the extent of the claimant's compensable injury. The ALJ went on to state that "Dr. [M] stated that the MRI results and [the] [c]laimant's physical examination findings did not support a finding that the mechanism of injury either caused or aggravated the disc protrusions at L4-[5] and L5-S1."

In his narrative report dated February 1, 2022, regarding the extent of the claimant's compensable injury, Dr. M noted there was an MRI that showed the L4-5 and L5-S1 protrusions, and "[t]he MRI comparison states that there is no change compared

to a prior study from [May 6, 2018].” We note that the record reflects the correct date of the prior MRI is May 9, 2018. In the Records Reviewed section of Dr. M’s narrative report, he listed a July 23, 2021, document labeled as “2nd Opinion of MRI dated [July 7, 2021].” Dr. M relied on a second opinion that compared the two lumbar MRIs from May 9, 2018, and July 7, 2021, but did not note that he had the actual MRI dated May 9, 2018, for himself to review.

In evidence is the lumbar MRI report dated May 9, 2018, which was not listed as a document that was reviewed by Dr. M. Also, in evidence are records from (Dr. Z), the treating doctor, including a letter of causation that also compares the May 9, 2018, and July 7, 2021, MRIs.

Section 408.0041(a)(3) provides that at the request of the insurance carrier or an employee, or on the commissioner’s own order, the commissioner may order a medical examination to resolve any question about the extent of the employee’s compensable injury. See *also* 28 Tex. Admin. Code § 127.1(a)(3) (Rule 127.1(a)(3)). 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. See *also* Rules 127.10(a)(3) and 127.10(b).

It is clear from Dr. M’s narrative report dated February 1, 2022, that he did not have all of the claimant’s medical records as required by Rule 127.10 when he determined the extent of the compensable injury. See Appeals Panel Decision (APD) 132258, decided November 20, 2013, and APD 140123, decided March 14, 2014. Accordingly, we reverse the ALJ’s determination that the compensable injury of (date of injury), does not extend to a lumbar disc herniation at L4-5 or L5-S1, and we remand the extent-of-injury issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. M is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. M is still qualified and available to be the designated doctor. If Dr. M is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Rule 127.5(d) to determine the extent of injury for the compensable injury of (date of injury).

On remand, the ALJ shall cause to be forwarded to the designated doctor copies of all the claimant’s medical records relating to the medical conditions to be evaluated that were not provided to Dr. M, including the May 9, 2018, MRI and all of the medical records from Dr. Z.

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 regarding the extent of the compensable injury that is 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge