APPEAL NO. 221815
FILED DECEMBER 28, 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 September 29, 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 October 13, 2021; and (2) the claimant's impairment rating (IR) is seven percent. The claimant appealed, disputing the ALJ's determinations of MMI and IR. The respondent (self-insured) responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury which extends to a head injury with concussion without loss of consciousness; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. S) as designated doctor to address MMI and IR; and that there are no other conditions or diagnoses that need to be adjudicated in this case for the purpose of determining MMI and IR. The claimant testified that she was injured on (date of injury), when a box fell and hit her in the head when she was unloading a trailer.

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 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.

Dr. S, the designated doctor, examined the claimant on May 31, 2022, and certified that the claimant had not yet reached MMI. Dr. S listed the following diagnoses in his narrative report: head injury and concussion without loss of consciousness and hearing loss due to a broken hearing aid. Dr. S stated in his narrative report that fixing the hearing aid will result in improved function and is necessary to certify a date of MMI. The ALJ noted in her discussion of the evidence that hearing loss due to a broken hearing aid was not a part of the compensable injury. The ALJ found that the preponderance of the other medical evidence was contrary to the certification from Dr. S that the claimant was not at MMI. This finding is supported by sufficient evidence.

(Dr. N), a treating doctor referral, examined the claimant on January 5, 2022, and certified that the claimant reached MMI on October 13, 2021, with a seven percent IR. In the narrative report, Dr. N listed the head and neck (cervical spine) as the body parts injured by the claimant. 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. N assessed seven percent impairment for the claimant's head injury and placed the claimant in Cervicothoracic Diagnosis-Related Estimate Category I: Complaints or Symptoms, assigning zero percent impairment. A cervical spine injury has not yet been determined to be a part of the compensable injury. Accordingly, the certification from Dr. N cannot be adopted. Therefore, we reverse the ALJ's determinations that the claimant reached MMI on October 13, 2021, and the claimant's IR is seven percent.

There is no other certification of MMI/IR in evidence. Accordingly, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the claimant reached MMI on October 13, 2021, and 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 seven percent and remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. S is the designated doctor in this case. The ALJ is to determine whether Dr. S is still qualified and available to be the designated doctor. If Dr. S 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/IR.

The ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to a head injury with concussion without loss of consciousness.

The ALJ is to request the designated doctor to rate the entire compensable injury in accordance with the AMA Guides and considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI and IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination on the claimant's MMI/IR for the (date of injury), compensable injury.

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 **(a certified self-insured)** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge