APPEAL NO. 231290
FILED NOVEMBER 2, 2023

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 17, 2023, with the record closing on July 29, 2023, 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 first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. V) on November 17, 2020, did not become final under Section 408.123 and 28 Tex. Admin. Code § 130.12 (Rule 130.12); (2) the respondent (claimant) reached MMI on November 14, 2020; and (3) the claimant's IR is 32%. The appellant (carrier) appeals the ALJ's determinations of finality, MMI, and IR. The appeal file does not contain a response from the claimant.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of bilateral multiple lower extremity and left-hand burns and post-traumatic stress disorder; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. W) as designated doctor to address the issues of MMI and IR; and the date of statutory MMI is November 14, 2020. The evidence reflected that the claimant was injured on (date of injury), when a gas pipe exploded while the claimant was operating a piece of heavy machinery.

FINALITY

Section 408.123(e) provides that, except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means, including IRs related to extent-of-injury disputes.

Section 408.123(f) provides in part: An employee's first certification of MMI or assignment of an IR may be disputed after the period described by Subsection (e) if: (1) compelling medical evidence exists of: (A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the IR; (B) a clearly mistaken diagnosis or a previously undiagnosed medical condition;

or (C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid.

The ALJ determined that the first certification and assigned IR from Dr. V on November 17, 2020, did not become final pursuant to Section 408.123 and Rule 130.12 because the first certification from Dr. V was not delivered to the claimant by verifiable means. The ALJ found that written notice of Dr. V's certification of MMI and assigned IR was not delivered to the claimant by verifiable means as alleged on December 14, 2020, and that Dr. V's certification of MMI and assigned IR was not delivered to the claimant on a date certain sufficient to ensure verifiable proof of delivery.

In evidence was a United States Postal System Tracking Card that showed delivery to an address in (city), Texas, on December 14, 2020. The claimant testified that in December of 2020, he did not live in (city), Texas, but rather had moved to (city), Texas. In his discussion of the evidence, the ALJ referenced a Dispute Resolution Information System (DRIS) note and noted that DRIS note No. 26 of 175 dated October 17, 2019, indicated that the adjuster verified that the claimant's old address was in (city), Texas, and the claimant's new address was in (city), Texas. However, the ALJ did not notify the parties on the record that he was going to take official notice of any of the DRIS notes and such DRIS note was not admitted into evidence as an ALJ exhibit. *See* Appeals Panel Decision (APD) 061295, decided August 23, 2006. Accordingly, we reverse the ALJ's determination that the first certification of MMI and assigned IR from Dr. V on November 17, 2020, did not become final under Section 408.123 and Rule 130.12 and remand the finality issue to the ALJ for further action consistent with this decision.

MMI/IR

As we have remanded the issue of whether the first certification of MMI and assigned IR from Dr. V on November 17, 2020, became final under Section 408.123 and Rule 130.12, we must also reverse the ALJ's determinations that the claimant reached MMI on November 14, 2020, and the claimant's IR is 32% and 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 first certification of MMI and assigned IR from Dr. V on November 17, 2020, did not become final under Section 408.123 and Rule 130.12 and remand the finality issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determinations that the claimant reached MMI on November 14, 2020, and the claimant's IR is 32% and remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to notify the parties that he took official notice of DRIS note number No. 26 and admit DRIS note No. 26 as an ALJ exhibit. The parties are to be allowed an opportunity to review and respond to DRIS note No. 26. The ALJ is then to make findings of fact, conclusions of law, and a decision on the disputed issues of whether the first certification of MMI and assigned IR from Dr. V on November 17, 2020, became final under Section 408.123 and Rule 130.12, MMI, and IR.

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 **MASTEC, INC.** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY D/B/A
CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge