

APPEAL NO. 231691
FILED JANUARY 19, 2024

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 October 10, 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 respondent (claimant) reached maximum medical improvement (MMI) on August 15, 2023; and (2) the claimant's impairment rating (IR) is five percent.

The appellant (carrier) appealed the ALJ's MMI and IR determinations. There was no response from the claimant to the carrier's appeal in the appeal file.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and the compensable injury consists of a right distal radius fracture and dislocation, right thumb distal phalanx fracture, and a right wrist sprain. The claimant, a warehouse worker, was injured on (date of injury), when two slabs of granite fell on him.

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 August 15, 2023, with a five percent IR as assigned by (Dr. H), a treating doctor referral.

Dr. H examined the claimant on August 29, 2023, and assigned the five percent IR based on the conditions of a right wrist triangular fibrocartilage complex (TFCC) tear, displaced fracture of distal phalanx of the right thumb, fracture of the right distal radius, and dislocation of the right distal radioulnar joint. A right wrist TFCC tear has not been accepted or determined to be part of the compensable injury. Additionally, the compensable right wrist sprain was not considered or rated by Dr. H. Therefore, the certification of Dr. H cannot be adopted. We reverse the ALJ's determination that the claimant reached MMI on August 15, 2023, with a five percent IR.

There is one other certification in evidence which is from the designated doctor, (Dr. B). Dr. B examined the claimant on March 17, 2023, and certified that the claimant reached MMI on September 12, 2022, with a five percent IR. Dr. B considered and rated the conditions of right wrist and distal radius fracture dislocation with open reduction and internal fixation (ORIF), "TCC" repair, and right thumb distal phalanx fracture with percutaneous pinning. As noted by the ALJ, Dr. B did not consider or rate the stipulated condition of a right wrist sprain. He also considered the "TCC" which has not been determined to be part of the compensable injury. Therefore, Dr. B's certification cannot be adopted.

There is no certification in evidence that can be adopted. 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 August 15, 2023, 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 five percent and remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. B is the designated doctor in this case. The ALJ is to determine whether Dr. B is still qualified and available to be the designated doctor. If Dr. B is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Division rules to opine on the issues of MMI and IR. The ALJ is to inform the designated doctor that the compensable injury extends to a right distal radius fracture and dislocation, right thumb distal phalanx fracture, and a right wrist sprain. The ALJ is to request that the designated doctor 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) 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 allowed an opportunity to respond. The ALJ is then to make a determination on the claimant's MMI and 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 **TECHNOLOGY INSURANCE COMPANY, INC.** and the name and address of its registered agent for service of process is

**UNITED AGENT GROUP, INC.
5444 WESTHEIMER ROAD, SUITE 1000
HOUSTON, TEXAS 77056-5318.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge