

APPEAL NO. 240094
FILED MARCH 14, 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 November 8, 2023, with the record closing on December 5, 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 appellant (claimant) reached maximum medical improvement (MMI) on March 7, 2023; and (2) the claimant's impairment rating (IR) is four percent.

The claimant appealed the ALJ's MMI and IR determinations. There was no response from the respondent (carrier) to the claimant'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), that extends to left knee strain, left knee medial meniscus tear, sprain of the medial collateral ligament of the left knee, chronic embolism and thrombosis of the left popliteal vein, and left knee lateral meniscus tear; and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. Q) as the designated doctor to determine the issues of MMI and IR. The evidence indicates that the claimant, a warehouse supervisor, was injured on (date of injury), when he slipped going up a flight of stairs and landed on his left knee.

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 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 March 7, 2023, with a four percent IR as assigned by Dr. Q.

Dr. Q initially examined the claimant on December 3, 2022, and issued alternate certifications. In the first certification, Dr. Q determined that the claimant reached MMI on November 30, 2022, with a four percent IR based on the conditions of a left knee strain, a tear of the medial meniscus, and a sprain of the medial collateral ligament. In the second certification, Dr. Q determined that the claimant had not reached MMI when considering the conditions of a left knee strain, a tear of the medial meniscus, a sprain of the medial collateral ligament, deep vein thrombosis (DVT) of the left popliteal vein, and left lateral meniscus tear.

Dr. Q subsequently examined the claimant April 22, 2023, and determined that the claimant reached MMI on March 7, 2023, with a four percent IR. This certification was adopted by the ALJ. In the narrative report dated April 22, 2023, Dr. Q states the claimant feels better since Dr. Q's last examination and has not received additional therapy or treatment other than blood thinners due to the DVT. Dr. Q also notes that the claimant has been able to return to work without restrictions. Although an attached chart shows that Dr. Q assigned the four percent IR based on the left partial medial and lateral meniscectomies pursuant to Table 64, on page 3/85, of 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), it is unclear what conditions Dr. Q considers in this report and whether the entire compensable injury is rated. Additionally, there is no explanation for the date of MMI. A review of the evidence indicates that there is a page missing from Dr. Q's April 22, 2023, narrative report. In both the claimant's and the carrier's exhibits, the April 22, 2023, narrative report goes from page 3 of 5 to page 5 of 5. As we cannot determine what conditions are considered and rated in the adopted certification, we reverse the ALJ's determinations that the claimant reached MMI on March 7, 2023, with a four percent IR, 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 claimant reached MMI on March 7, 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 four percent and remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the ALJ is to obtain and admit a complete copy of Dr. Q's April 22, 2023, MMI and IR certification.

The ALJ is then to make a determination on the claimant's MMI and IR for the (date of injury), compensable injury which is supported by the evidence.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEANETTE WARD, PRESIDENT & CEO
2200 ALDRICH STREET
AUSTIN, TEXAS 78723-3474.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge