

APPEAL NO. 022277
FILED OCTOBER 23, 2002

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 August 21, 2002. With respect to the issues before him, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on May 13, 2001, with an impairment rating (IR) of 18%, as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in her amended report. In its appeal, the appellant (carrier) argues that the hearing officer erred in adopting the amended report of the designated doctor because the designated doctor, a chiropractor, was no longer qualified under Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5) to assign an IR to the claimant at the time of the amendment because the claimant had undergone two spinal surgeries. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and remanded.

In the relevant portion of the benefit review conference report, the benefit review officer stated “[t]he question to be answered is whether a new Designated Doctor should be appointed under the new [Request for Designated Doctor] TWCC 32 who conforms to the medical requirements to evaluate the Claimant or does the existing Designated Doctor's reevaluation carry presumptive weight?” In the claimant's opening statement, the claimant's attorney noted that “the dispute before us today is whether the findings of the designated doctor should be overturned on the basis that she is no longer qualified to give an [IR] to the claimant.” Similarly, in its opening statement, the carrier stated that its “contention is that under Section 408.0041 and Rule 130.5, the designated doctor is not qualified to certify [MMI] and assign an [IR] to the claimant.” However, in his decision, the hearing officer makes no mention of either Section 408.0041 or Rule 130.5 and his only comment regarding the argument is that it is “without merit and is not persuasive.” From that discussion, it is apparent that the hearing officer did not consider or resolve the issue before him, namely the effect of Section 408.0041 and Rule 130.5 in this instance, where the claimant was sent back to the designated doctor, a chiropractor, for reexamination following two spinal surgeries. Accordingly, we remand the case for the hearing officer to determine whether the designated doctor was no longer qualified to serve as the designated doctor at the time of her amendment such that a new designated doctor should be appointed in this instance or whether the designated doctor's amendment is entitled to presumptive weight.

In her response, the claimant argues that the carrier waived its right to challenge the designated doctor's qualifications because it did not do so prior to the time it received the results of that examination. The claimant cites several Appeals Panel

decisions in support of that argument. We cannot agree that those cases control here. Under Rule 130.5(d)(2), the Commission is charged with the responsibility of ensuring that a designated doctor is still qualified before scheduling an appointment with the designated doctor to reexamine the claimant. We find no authority for relieving the Commission of its obligation in that regard, even if the party's challenge to the qualifications of the designated doctor comes after the results of the examination are known. We note that rule 130.5(d)(2) became effective on January 2, 2002, and does not provide exceptions for claims in progress prior to that time. Indeed, the wording of Rule 130.5(d)(2) contemplates using a previously selected designated doctor "if the doctor is still qualified." If the doctor is not still qualified, selection of a new designated doctor is mandated.

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 hearing officer, 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 Commission's Division of Hearings, 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 Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Margaret L. Turner
Appeals Judge