

APPEAL NO. 022467
FILED NOVEMBER 14, 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 September 9, 2002. With respect to the issues before her, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on the stipulated date of statutory MMI, January 22, 2001, with an impairment rating (IR) of 31%, as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in his 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 spinal surgery. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and remanded.

In the carrier's opening statement, the attorney noted that the dispute in this case is really whether the amended report of the designated doctor is valid on the basis that he is no longer qualified to give an IR to the claimant, per Rule 130.5(d)(2)(C). However, in her decision, the hearing officer makes no mention of either Section 408.0041 or Rule 130.5 and her only comment regarding the argument is that "there was little to no evidence that [the designated doctor's] examination and resulting rating was incorrect." From that discussion, it is apparent that the hearing officer did not consider or resolve the issue before her, 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 complex spinal surgery. 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 his 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.

The benefit review officer requested that the designated doctor, a chiropractor, reexamine the claimant, after her multi-level spinal fusion surgery of September 5, 2000, and he did so, generating a report on March 7, 2002. 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. See Texas Workers' Compensation Commission Appeal Number 022277, decided October 23, 2002, for a similar result on the same issue.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge