

APPEAL NO. 031765  
FILED AUGUST 21, 2003

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 June 6, 2003. The hearing officer determined that the appellant's (claimant) \_\_\_\_\_, compensable injury extends to include a brain injury; that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in appointing a second designated doctor, Dr. B; and that the claimant reached maximum medical improvement (MMI) on September 6, 2001, with a 13% impairment rating (IR) pursuant to Dr. B's certification. The claimant appealed, asserting that the Commission erred in appointing Dr. B as the second designated doctor, and also asserting that Dr. B's 13% IR is against the great weight of the medical evidence because he failed to rate her entire injury. The respondent (carrier) urges affirmance. The hearing officer's extent-of-injury and MMI determinations have not been appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part, reversed and remanded in part.

The hearing officer did not err in determining that the Commission did not abuse its discretion in appointing Dr. B as the second designated doctor. The Commission initially appointed Dr. M to act as designated doctor in this case. In his report dated October 30, 2001, Dr. M awarded a 6% IR for whole person spine impairment. Dr. M noted that he was unable to give a rating for a possible central nervous system disorder because relevant test results were unavailable, but that once the results became available, an appropriate addendum would be issued as warranted. On August 16, 2002, a hearing was held to determine if the claimant's compensable injury extends to include a brain injury in addition to the neck, low back, upper back, lower extremity (hip) and thoracic outlet syndrome. The Commission's Dispute Resolution Information System records indicate that the parties agreed to return the issue to the dispute resolution officer for the appointment of a doctor to perform a required medical evaluation (RME). Dr. N performed the evaluation and found possible, mild traumatic brain injury. Following Dr. N's evaluation, the Commission appointed Dr. B to act as designated doctor. Dr. B examined the claimant on November 21, 2002, and issued a 13% IR, 6% for the cervical spine, 2% for the leg, and 5% for the traumatic brain injury.

On appeal, the claimant asserts that the Commission abused its discretion by failing to send the matter back to Dr. M, the original designated doctor. We do not agree. Pursuant to Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(d)(2) (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. 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." However, if the doctor is not longer qualified, selection of a new designated doctor is mandated. See Texas Workers' Compensation Commission Appeal Number 022277, decided October 23, 2002. The hearing officer found that "[I]t was not unreasonable to appoint a medical doctor to assess an injury including the brain, since a chiropractor normally addresses injuries associated with the spine." In the instant case, we cannot say that the Commission abused its discretion by appointing a medical doctor to evaluate an injury that includes the brain.

The claimant next asserts that the hearing officer erred in giving Dr. B's 13% IR certification presumptive weight because he failed to address her entire injury. We agree. Based upon the framing of the issue, it is clear that the claimant's compensable injury includes, in addition to a brain injury, an injury to the neck, low back, upper back, left lower extremity (hip), and thoracic outlet syndrome. Dr. B's report indicates that he evaluated the cervical spine, hip, and brain injury. It does not appear that Dr. B evaluated the claimant's low back in assigning an IR. Additionally, it is unclear whether Dr. B evaluated the claimant's upper back and thoracic outlet syndrome. Because it appears that the claimant's entire injury has not been rated, we remand this case to the hearing officer with instructions to have Dr. B reexamine the claimant and determine whether, in addition to the IR he assessed for the neck, brain and hip injury, the claimant's compensable upper back injury, low back injury and thoracic outlet syndrome warrant a rating. Dr. B should assign an IR based on the entire 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 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 **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

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

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Chris Cowan  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Edward Vilano  
Appeals Judge