

APPEAL NO. 041503  
FILED AUGUST 6, 2004

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 May 18, 2004. With respect to the issues before her, the hearing officer determined that Dr. H was properly appointed by the Texas Workers' Compensation Commission (Commission) as the designated doctor in accordance with Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5), and that the appellant (claimant) reached maximum medical improvement (MMI) on December 17, 2003, with a 10% impairment rating (IR) as certified by the designated doctor. In his appeal, the claimant argues that the hearing officer erred in determining that Dr. H was properly appointed as the designated doctor. In the alternative, the claimant contends that even if Dr. H's appointment was proper, the hearing officer erred in giving presumptive weight to his certification of MMI and IR. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we consider the issue of whether Dr. H was properly appointed as the designated doctor in accordance with Section 408.0041 and Rule 130.5. The claimant argues that Dr. H was not properly appointed by the Commission to serve as the designated doctor under Texas Workers' Compensation Commission Appeal No. 030737-s, decided May 14, 2003, because the procedures used by the doctor treating the claimant were not within the scope of practice of Dr. H. That argument is consistent with the interpretation given to Section 408.0041 and Rule 130.5 in Appeal No. 030737-s; however, in Texas Workers' Compensation Commission Appeal No. 040633-s, decided May 7, 2004, we retreated from our decision in Appeal No. 030737-s based upon Commission Advisory 2004-03, dated April 19, 2004, where the Executive Director stated that the "phrase 'scope of practice' as it is commonly used is synonymous with a doctor's licensure." Under the advisory, because Dr. H is a medical doctor, he satisfies the requirement of having the same licensure as the doctor treating the claimant and he was, therefore, properly appointed as the designated doctor. Accordingly, the hearing officer did not err in determining that Dr. H was properly appointed as the designated doctor in this instance.

Next, we consider the claimant's assertion that the hearing officer erred in giving presumptive weight to the designated doctor's report and in determining that the claimant reached MMI on December 17, 2003, with a 10% IR in accordance with that report. The claimant maintains that he is not at MMI because he is still undergoing active treatment. We cannot agree that the medical reports indicating that the claimant has not yet reached MMI constitute the great weight of the other medical evidence contrary to the designated doctor's report. Rather, this is a case where there is a genuine difference of medical opinion as to whether the claimant has reached MMI. We

have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. Thus, the hearing officer did not err in giving presumptive weight to the designated doctor's report and adopting the December 17, 2003, MMI date and the 10% IR.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL , SUITE 2900  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Edward Vilano  
Appeals Judge