APPEAL NO. 042239
FILED OCTOBER 28, 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 July 29, 2004. The hearing officer resolved the disputed issues by deciding: (1) that the appellant's (claimant) _____, compensable injury does not extend to include right carpal tunnel syndrome or right wrist sprain/strain; (2) that the Texas Workers' Compensation Commission (Commission)-selected designated doctor's certification of maximum medical improvement (MMI) and impairment rating (IR) cannot be adopted by the Commission because the great weight of the other medical evidence is to the contrary; (3) that the claimant's date of MMI cannot be determined from the evidence presented; (4) that the claimant's IR cannot be determined until the date of MMI is determined; and (5) that the claimant had disability beginning May 16, 2002, through November 20, 2003. The claimant appealed the hearing officer's determinations that he cannot determine the claimant's date of MMI and IR. The claimant argued that it was error for the hearing officer to fail to adopt the IR of Dr. D, and requested that a new decision be rendered that the claimant reached MMI on November 20, 2003, with a 7% IR as reported by Dr. D. The appeal file does not contain a response from the respondent (self-insured). The extent-of-injury and disability determinations were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The Commission-selected designated doctor reported that the claimant reached MMI on May 15, 2002, with a 1% IR. The hearing officer found that the designated doctor's certification of MMI and IR cannot be adopted by the Commission because the great weight of the other medical evidence is to the contrary. This finding was not appealed. In evidence was a Report of Medical Evaluation (TWCC-69) from a carrier-selected required medical examination doctor dated January 29, 2002, who found that the claimant had not yet reached MMI. Additionally, a TWCC-69 from Dr. D who certified that the claimant reached MMI on November 20, 2003, with an IR of 7%, utilizing 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). The TWCC-69 reflects that Dr. D was selected by the treating doctor to act in place of the treating doctor. Dr. D based the IR on 1% upper extremity impairment of the right elbow for loss of motion and 10% upper extremity impairment for the right shoulder loss of motion. Dr. D used the combined values chart to obtain an 11% upper extremity impairment and then used Table 3 to convert the 11% upper extremity impairment to a 7% whole person impairment.

The hearing officer did not adopt the IR of another doctor but instead decided that a second designated doctor should be appointed. The claimant argues on appeal that the hearing officer erred because he failed to adopt Dr. D's assessment of MMI and IR. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors.

The claimant contends that the hearing officer failed to adopt Dr. D's assessment for the sole reason that he is a chiropractor. The hearing officer stated in the Background Information section of the decision and order that Dr. D's certification of MMI and IR cannot be adopted based on his status as a chiropractor. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1 (Rule 130.1) provides in part that only an authorized doctor may certify MMI, determine whether there is permanent impairment, and assign an IR if there is permanent impairment. Rule 130.1(a)(1)(A) allows for a doctor to whom the treating doctor has referred the injured employee for evaluation of MMI and/or permanent whole body impairment in place of the treating doctor. There was no allegation at the hearing that Dr. D was not authorized to determine whether an injured employee has permanent impairment, assign an IR and certify MMI. We are not aware of any authority that precludes a chiropractor from assigning an IR and certifying MMI when the treating doctor has referred the claimant to him for evaluation of MMI and/or permanent whole body impairment in place of the treating doctor. Because it appears that the sole reason the hearing officer declined to adopt the IR and MMI certified by Dr. D was based on his status as a chiropractor we remand this case to the hearing officer for further explanation.

We remand this case back to the hearing officer. If the hearing officer decides Dr. D's MMI/IR certification should not be adopted, he must explain why Dr. D's MMI/IR certification cannot be adopted solely because Dr. D is a chiropractor and disregarding the fact that Dr. D is a chiropractor, explain why, if it is otherwise valid, Dr. D's MMI/IR should not be adopted considering that adoption is required by Section 408.125(c). If on remand the hearing officer decides to adopt Dr. D's MMI/IR certification he must explain why Dr. D's certification should be adopted.

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 **a governmental entity that self-insures either individually or collectively through the TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Robert E. Lang
Appeals Panel
Manager/Judge

_____
Robert W. Potts
Appeals Judge