

APPEAL NO. 060047  
FILED MARCH 16, 2006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 7, 2005, with the record closing on November 30, 2005. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) impairment rating (IR) is 34%. The appellant (carrier) appealed, arguing that the hearing officer determined the IR issue without the carrier having an opportunity to receive or respond to the second report of the designated doctor or to offer evidence in response. The carrier additionally disputes the 34% IR. The appeal file does not contain a response from the claimant.

DECISION

Reversed and remanded.

The record reflects that the parties agreed that the claimant reached maximum medical improvement by operation of law on March 15, 2004. The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The evidence reflects that the claimant sustained an injury to her back while in the course and scope of her employment. In a CCH held on December 15, 2004, it was determined that the compensable injury of \_\_\_\_\_, extended to include major depressive disorder. Neither the parties nor Texas Department of Insurance, Division of Workers' Compensation (Division) records indicate that this decision was appealed.

Both the claimant's treating doctor and the designated doctor's initial certification of IR were made prior to the determination that the claimant's compensable injury included major depressive disorder. On March 15, 2005, the designated doctor reexamined the claimant to assess impairment for the compensable injury, including the major depressive disorder. The designated doctor assessed an IR of 34%. However, the amended narrative report did not specifically delineate how the designated doctor arrived at the 34% for the entire compensable injury. After the CCH, the hearing officer sent a letter of clarification to the designated doctor, requesting that the designated doctor explain how he arrived at the 34% IR. The designated doctor responded, stating that it appeared that his full summary was not received and sent the report as originally prepared. The hearing officer notes in his decision that the designated doctor's response was forwarded to both parties with instructions "to respond within a period of time." The Dispute Resolution Information System (DRIS) notes indicate that the parties were sent a copy of the report on October 24, 2005. However, the DRIS notes further indicate that on November 14, 2005, an employee from the claimant's attorney's office called inquiring about the designated doctor's response. The note further indicates that a copy was faxed to her on this date. A DRIS entry dated December 13, 2005, indicated that the carrier's attorney's office was called to check whether he had received a copy of the designated doctor's response. An employee of the carrier's

attorney's office indicated that he had not received a copy of the response of the designated doctor. The Division records indicate that the response was then faxed to the carrier's attorney on December 13, 2005. We note that the cover letter forwarding the response of the designated doctor's response with instructions to respond within a period of time was not included as a hearing officer's exhibit.

The carrier argues on appeal that it was not provided with the copy of the designated doctor's response to the hearing officer's letter of clarification until December 13, 2005, four days after the hearing officer signed his decision. There is evidence in the record to indicate that neither party received a copy of the designated doctor's report by mail so they could respond by the date set forth by the hearing officer. Therefore, we reverse the hearing officer's determination that the IR is 34% and remand this case back to the hearing officer to allow the parties an opportunity to respond to the designated doctor's report dated October 21, 2005, including the presentation of additional evidence.

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 Division, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

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

**MR. RUSSELL RAY OLIVER, PRESIDENT  
6210 HIGHWAY 290 EAST  
AUSTIN, TEXAS 78723.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge