

APPEAL NO. 062068  
FILED DECEMBER 4, 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 September 7, 2006. With regard to the only issue before him the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 1%.

The claimant appeals, contending among other things that the designated doctor did not have all of his medical records from his first treating doctor. The claimant asserts the 17% IR assessed by his current treating doctor is correct. The respondent (carrier) responds, urging affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, that the claimant reached maximum medical improvement (MMI) "at the statutory date" and that the compensable injury "does not extend to the cervical spine." In an unappealed finding the hearing officer determined that the claimant reached "MMI by statute as of September 24, 1997." The testimony and medical evidence establishes that the claimant sustained a right arm and elbow injury, that Dr. H was the claimant's initial treating doctor in 1996 and 1997, that Dr. R is the claimant's current treating doctor and that Dr. N is the designated doctor.

The designated doctor, in a report dated October 10, 2000, stated that the available medical records were reviewed. The claimant asserts that the only record that the designated doctor had from Dr. H was a one page report and that he, the claimant, did not find all of his medical records until late 2003. The claimant contends that he does "not have an elbow injury" but rather has a "nerve problem."

The claimant requested that the designated doctor be asked what medical records he had reviewed from Dr. H. The Texas Department of Insurance, Division of Workers' Compensation (Division), in an undated letter (Claimant's Exhibit No. 6 page 1) made the request to Dr. N and the Division in response dated December 13, 2005, back to the claimant, confirmed that only one report of a date of visit on January 15, 1997, had been sent to Dr. N. In evidence at the CCH marked as Claimant's Exhibit No. 3, are reports from Dr. H dates of visits on March 12, 1996, May 1, 1996, August 7, 1996, August 21, 1996, an operative report dated August 29, 1996, from Dr. H, other reports from Dr. H dated September 25, 1996, November 6, 1996, the report of a date of visit on January 15, 1997, and a surgical pathology report dated August 29, 1998, which shows Dr. H as the attending and admitting physician.

The hearing officer, in his Background Information, seems to agree that Dr. H's records and reports (other than the January 15, 1997, report) had not been sent to the designated doctor stating:

It should be noted that the significance of [Dr. H's] records, as far as the subsequent treating and examining doctors are concerned, lies in the fact that they document complaints of a cervical as well as an elbow injury. [Dr. N's] first and last ratings are only for an elbow injury involving no nerve damage. In that regard, the record deficiency was rectified due to the intervention of [Dr. R] on the Claimant's behalf . . . .

28 TEX. ADMIN. CODE § 130.5(d) (Rule 130.5(d)) in subparagraph (1)(D) requires the treating doctor and carrier to forward all medical records to the designated doctor and similarly Rule 130.5(d)(3)(A) provides that "the treating doctor and insurance carrier shall provide to the designated doctor copies of all the injured employee's medical records in their possession . . . ." In Appeals Panel Decision (APD) 022348, decided October 31, 2002, a case where the designated doctor said no records were made available at the time of the examination, the Appeals Panel held:

It has long been recognized that the 1989 Act and the [Division's] rules require that the designated doctor conduct an examination of the claimant and review the claimant's medical records. See [APD] 002154, October 30, 2000; [APD] 971733, decided October 20, 1997; and [APD] 962282, decided December 23, 1996. Indeed, the version of . . . Rule 130.6(h)<sup>1</sup> applicable in this case, establishes that the treating doctor and the carrier are responsible for sending the employee's medical records to the designated doctor. In addition, Rule 130.1(b)(4)(A) and 130.1(c)(3) specifically require that the certifying doctor, including the designated doctor, review the medical records before certifying an MMI date and assigning an IR.

We hold that the hearing officer, in this case, erred by stating that the record deficiency was rectified due to the intervention of Dr. R. The designated doctor is required to have all of the claimant's medical records relating to the medical condition to be evaluated, not just those of the current treating doctor. We reverse the hearing officer's decision that the claimant's IR is 1% and remand the case to the hearing officer. The hearing officer is to determine whether Dr. N is still qualified and available to be the designated doctor, and if so, cause to be forwarded all of Dr. H's records to the designated doctor for review and determine the claimant's IR as of the September 24, 1997, MMI date. To determine that IR, the designated doctor may choose to reexamine the claimant to assess the IR for the compensable right arm and elbow injury. The designated doctor should then assign an IR for the claimant based on the claimant's condition as of the September 24, 1997, MMI date considering the medical records and certifying examination. A copy of this IR is to be made available to the

---

<sup>1</sup> The provision that requires the treating doctor and the carrier to provide medical records to the designated doctor is now contained in Rule 130.5(d)(3).

parties and the parties are to be given an opportunity to respond. The hearing officer is then to make a determination on the IR 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 Division, 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 APD 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **an impaired carrier** and the name and address of its registered agent for service of process is

**EXECUTIVE DIRECTOR  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Veronica L. Ruberto  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge