APPEAL NO. 122210
FILED DECEMBER 6, 2012

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 April 2, 2012, and concluded on September 17, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) has not reached maximum medical improvement (MMI) and no impairment rating (IR) can be assigned; (2) the claimant had disability from April 18, 2011, through August 13, 2012, but at no other time through September 17, 2012, the date of the CCH; and (3) [Dr. P] was not properly appointed as the second designated doctor in accordance with Section 408.0041 and 28 TEX. ADMIN. CODE § 127.5 (Rule 127.5).[1] The appellant (carrier) appealed the hearing officer's determinations on MMI/IR and disability. The claimant responded, urging affirmance.

The hearing officer's determination that Dr. P was not properly appointed as the second designated doctor in accordance with Section 408.0041 and Rule 127.5 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the carrier accepted post-traumatic stress disorder as compensable.[2] The evidence reflects that the claimant worked in a bank on [date of injury], and armed robbers threatened and assaulted the claimant's co-workers during the course of the robbery at the bank.

The parties also stipulated that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. F] as a third designated doctor to determine MMI/IR and return to work, and Dr. F certified that the claimant reached MMI on April 18, 2011, with three percent IR. The hearing officer found that "[t]he findings of [the] designated doctor [Dr. F] regarding his certification of [MMI/IR] are not supported by a preponderance of the evidence."

[1] The parties resolved by stipulation the issue of whether Dr. P was properly appointed.
[2] This stipulation made by the parties was omitted from the hearing officer's decision and order.

## MMI/IR

The hearing officer's determination that the claimant has not reached MMI and no IR may be assigned is supported by sufficient evidence and is affirmed.

## DISABILITY

Disability is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. The question of disability presented a question of fact for the hearing officer to resolve.

Under the Evidence Presented section of her decision, the hearing officer noted that the only witness at the CCH was [Dr. C]. A review of the recording of the CCH reflects that the claimant did not testify at the CCH settings on April 2, 2012, and September 17, 2012. In the Background Information section of her decision, the hearing officer stated:

[The] [c]laimant's testimony and the credible medical evidence supports that the [c]laimant was unable to earn her pre-injury wage as a result of the compensable injury from April 18, 2011, through August 13, 2012, the date that she completed orientation for classes.

There is no evidence regarding the claimant completing an orientation for classes. These were only statements by the claimant's attorney during the CCH in his opening remarks and in his closing argument. There is no evidence supporting August 13, 2012, as the ending date of disability. Furthermore, the hearing officer erred regarding a material fact, i.e. that the claimant testified at the CCH and that her testimony supported the ending date of disability. Accordingly, the hearing officer's determination that the claimant had disability from April 18, 2011, through August 13, 2012, but at no other time through September 17, 2012, the date of the CCH, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

We reverse the hearing officer's determination that the claimant had disability from April 18, 2011, through August 13, 2012, but at no other time through September 17, 2012, the date of the CCH. We remand the disability issue to the hearing officer to determine if the claimant had disability resulting from an injury sustained on [date of injury], for the period of April 18, 2011, through September 17, 2012, the date of the CCH as supported by the 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 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* Appeals Panel Decision 060721, decided June 12, 2006.

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

**CORPORATION SERVICE COMPANY**
**211 EAST 7TH STREET, SUITE 620**
**AUSTIN, TEXAS 78701-3218**.

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge