APPEAL NO. 140111
FILED MARCH 20, 2014

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 December 6, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) [Dr. G] was appointed to serve as designated doctor in accordance with Section 408.0041 and Texas Department of Insurance, Division of Workers' Compensation (Division) rules; and (2) the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by [Dr. B] on April 3, 2013, did not become final under Section 408.123. The appellant (self-insured) appeals the hearing officer's determination that Dr. G was appointed to serve as designated doctor in accordance with Section 408.0041 and the Division rules. Additionally, the self-insured contends that the "green card" in evidence established that the respondent (claimant) received the first valid IR on or before April 25, 2013, and that the hearing officer improperly determined the extent of the claimant's compensable injury when she determined that the first certification of MMI and IR assigned by Dr. B was not valid. The appeal file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury. An expedited CCH was held to determine whether Dr. G was appointed to serve as designated doctor in accordance with Section 408.0041 and the Division rules. A second issue was added at the CCH by the hearing officer because it was actually litigated by the parties. The hearing officer added the following issue: Did the first certification of MMI and IR assigned by Dr. B on April 3, 2013, date become final under Section 408.123? The self-insured argued that Dr. G should not have been

appointed to serve as designated doctor because the first certification assigned by Dr. B became final under Section 408.123.

Section 408.123(e) provides that except as otherwise provided by this section, an employee's first valid certification of MMI and the first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. 28 TEX. ADMIN. CODE § 130.12(b) (Rule 130.12(b)) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means and that the notice must contain a copy of a valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c). Rule 130.12(c) provides, in part, that a certification of MMI and/or IR assigned as described in subsection (a) must be on a [DWC-69]. The certification on the [DWC-69] is valid if: (1) there is an MMI date that is not prospective; (2) there is an impairment determination of either no impairment or a percentage [IR] assigned; and (3) there is the signature of the certifying doctor who is authorized by the [Division] under Rule 130.1(a) to make the assigned impairment determination. No specific exception to finality under Section 408.123(f) was litigated at the CCH.

In evidence was a "green card" that lists A Notification of [MMI]/First Impairment Income Benefit Payment (PLN-3) and medical documents as being enclosed. The claimant signed the green card and his signature is dated March 23, 2013. The certification from Dr. B is dated April 3, 2013, and reflects that Dr. B examined the claimant on March 26, 2013, and certified that the claimant reached MMI on March 12, 2013, with a zero percent IR. In her discussion of the evidence, the hearing officer noted that Dr. B's certification was not issued until April 3, 2013, and therefore the green card signed by the claimant dated March 23, 2013, could not be evidence of his receipt of Dr. B's certification. The hearing officer found that Dr. B's IR was not provided to the claimant by verifiable means. Written notice is verifiable when it is provided from any source in a manner that reasonably confirms delivery to the party, and that this may include acknowledged receipt by the injured employee or insurance carrier, a statement of personal delivery, confirmed delivery by e-mail, confirmed delivery by facsimile transmission or some other confirmed delivery to the home or business address. See Appeals Panel Decision (APD) 041985-s, decided September 28, 2004; APD 121814, decided December 10, 2012. The self-insured argues that the claimant misdated his signature on the green card and that it received the signed green card back on April 25, 2013, which proves the claimant must have received it on or before April 25, 2013. This presented a question of fact for the hearing officer to resolve. The hearing officer's finding that Dr. B's certification of MMI and IR was not provided to the claimant by verifiable means is supported by sufficient evidence and is affirmed. Accordingly, the

hearing officer's determination that the first certification of MMI and IR assigned by Dr. B on April 3, 2013, did not become final under Section 408.123 is affirmed.

The hearing officer additionally found that Dr. B's assigned IR was not a valid rating. In her discussion, the hearing officer noted that the claimant pointed to Dispute Resolution Information System (DRIS) notes which highlight a discussion wherein the adjuster acknowledges the thoracic spine condition was not disputed. The hearing officer additionally commented that Dr. B's failure to rate the claimant's thoracic injury which was deemed compensable by the self-insured renders Dr. B's certification invalid. The hearing officer did not make a specific finding regarding whether the compensable injury extended to a thoracic injury. We note that extent of injury was not a disputed issue before the hearing officer. The hearing officer's finding that Dr. B's assigned IR was not a valid rating was based on her discussion that Dr. B did not rate the entire compensable injury. As previously noted, extent of injury was not a disputed issue and no specific finding of fact regarding the extent of the compensable injury was found by the hearing officer. Accordingly, we strike the hearing officer's Finding of Fact No. 4 that Dr. B's assigned IR was not a valid rating. *See also* APD 132117, decided November 4, 2013.

We affirm the hearing officer's determination that Dr. G was appointed to serve as designated doctor in accordance with Section 408.0041 and Division rules.

We affirm the hearing officer's determination that the first certification of MMI and IR assigned by Dr. B on April 3, 2013, did not become final under Section 408.123.

We reform the hearing officer's decision by striking Finding of Fact No. 4 that Dr. B's assigned IR was not a valid rating.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

JONATHAN BOW
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

JONATHAN BOW
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

Margaret L. Turner
Appeals Judge

CONCUR:

Tracey T. Guerra
Appeals Judge

Carisa Space-Beam
Appeals Judge