

APPEAL NO. 140399  
FILED APRIL 7, 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 was held on January 29, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from [Dr. D] on April 1, 2010, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); and (2) Dr. D was not the respondent's (claimant) initial choice of treating doctor.

The appellant (carrier) appealed the hearing officer's determinations. The carrier contends that the hearing officer's decision is wrong as a matter of law as the evidence is legally insufficient to support the decision. The carrier argues that Dr. D's MMI/IR certification became final because, although the claimant submitted a Request for Designated Doctor Examination (DWC-32) within the 90-day period after receiving Dr. D's MMI/IR certification by verifiable means, the claimant's timely DWC-32 was denied by the Texas Department of Insurance, Division of Workers' Compensation and therefore does not constitute a valid dispute of Dr. D's MMI/IR certification. The carrier also argues that Dr. D is the claimant's treating doctor because this is a network claim and Dr. D is a network doctor. The carrier alleges that [Dr. B], the doctor with whom the claimant first treated, is not in the carrier's network, and as such he cannot be the claimant's treating doctor. The claimant responded, urging affirmance of the hearing officer's determinations.

## DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that she injured her lower back while emptying water from a bucket. It was undisputed that the employer had contracted with the carrier for the provision of health care services through a network as of the date of injury in this case. It was also undisputed that the claimant initially saw Dr. B on the day after the injury, and that the employer told the claimant approximately two days later that she had to see another doctor because Dr. B was not on the list of network treating doctors. It was undisputed that the claimant then started treating with Dr. D, who was a treating doctor on the network list, and that the claimant did not return to Dr. B for treatment.

## CHOICE OF TREATING DOCTOR

Insurance Code Section 1305.005(b) provides that if an employer elects to contract with an insurance company for the provision of health care services through a network, the employer's employees who live within the network's service area are required to obtain medical treatment for a compensable injury within the network, except as provided by Sections 1305.006(1) and (3).

Insurance Code Section 1305.006 provides in part that an insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee: (1) emergency care; and (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103.

Insurance Code Section 1305.103 provides in part that for each injury, an injured employee shall select a treating doctor from the list of all treating doctors under contract with the network in that service area. Insurance Code Section 1305.104 provides in part that an injured employee is entitled to the employee's initial choice of a treating doctor from the list provided by the network of all treating doctors under contract with the network who provide services within the service area in which the injured employee lives.

As mentioned above, it was undisputed that: (1) the employer had contracted with the carrier for the provision of health care services through a network as of the date of injury in this case; (2) Dr. B was not on the network treating doctor list; and (3) Dr. D was on the network treating doctor list. Insurance Code Section 1305.005 provides that an injured employee living within the network's service area is required to obtain medical treatment for a compensable injury within the network, and Insurance Code Section 1305.103 provides that an injured employee shall select a treating doctor from the list of all treating doctors under contract with the network in that service area. The parties did not specifically litigate whether the initial treatment with Dr. B was for emergency care. As previously mentioned, the claimant started treating with Dr. D, who was a treating doctor on the network list, after the employer told her that she had to see another doctor because Dr. B was not on the list of network treating doctors, and that the claimant did not subsequently return to Dr. B for treatment. Under the facts of this case and pursuant to Insurance Code Sections 1305.005, 1305.103, and for purposes of the 1989 Act, Dr. D was the claimant's initial treating doctor. Accordingly, we reverse the hearing officer's determination that Dr. D was not the claimant's initial choice of treating doctor, and we render a new decision that Dr. D is the claimant's initial treating doctor for purposes of the 1989 Act.

## FINALITY

The hearing officer's determination that the first MMI/IR certification from Dr. D on April 1, 2010, did not become final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

## SUMMARY

We affirm the hearing officer's determination that the first MMI/IR certification from Dr. D on April 1, 2010, did not become final under Section 408.123 and Rule 130.12.

We reverse the hearing officer's determination that Dr. D was not the claimant's initial choice of treating doctor, and we render a new decision that Dr. D is the claimant's initial treating doctor for purposes of the 1989 Act.

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

**RICHARD GERGASKO, PRESIDENT  
6210 HIGHWAY 290 EAST  
AUSTIN, TEXAS 78723.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Tracey T. Guerra  
Appeals Judge

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Margaret L. Turner  
Appeals Judge