

APPEAL NO. 140712
FILED MAY 29, 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 17, 2013, with the record closing on February 20, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) [Dr. W], the first designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division), has a disqualifying association in accordance with 28 TEX. ADMIN. CODE § 127.140 (Rule 127.140)¹; (2) the compensable injury of [date of injury], does not extend to the diagnosed cervical disc herniation at C3-4 and lumbar disc bulges at L4-5 and L5-S1; (3) the appellant (claimant) reached maximum medical improvement (MMI) on August 29, 2013; and (4) the claimant's impairment rating (IR) is five percent.

The claimant appealed all of the hearing officer's determinations. The claimant contends that there is no evidence to support the hearing officer's extent-of-injury determination. The claimant further contends that Dr. W does not have a disqualifying association but Dr. R, the post-designated doctor RME doctor, does have a disqualifying association. The claimant points out in her appeal that the hearing officer failed to make Findings of Fact, Conclusions of Law, or a Decision as to whether Dr. R has a disqualifying association in accordance with Rule 127.140, which was an issue added without objection prior to the CCH to be determined by the hearing officer. The respondent (self-insured) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], which includes a lumbar sprain/strain, and that the designated doctor appointed on the issues of MMI, IR, and extent of injury was Dr. W. The claimant testified she was injured when the school bus she was driving was struck on the driver side by another vehicle. It was undisputed that [Dr. L] was subsequently appointed as the second designated doctor by the Division on the issues of MMI and IR.

¹ We note that the hearing officer in Conclusion of Law No. 3 and in the Decision stated that "[t]he designated doctor has a disqualifying association in accordance with Rule 127.140" without identifying the designated doctor as Dr. W. However, the hearing officer found in Finding of Fact No. 4 that [the] "[d]esignated doctor [Dr. W] had an association with [required medical examination (RME)] doctor [Dr. R] that may reasonably be perceived as having the potential to influence the conduct or decision of the designated doctor."

TIMELINESS OF THE CLAIMANT'S APPEAL

The carrier contends in its response that the claimant's appeal was untimely. Division records reflect that the hearing officer's decision and order was distributed to the parties on February 27, 2014. The claimant was deemed to have received the decision and order on March 4, 2014. See Rule 102.5(d). The claimant's appeal filed on March 25, 2014, was timely filed. See Section 410.202.

DISQUALIFYING ASSOCIATION OF DR. W AND EXTENT OF INJURY

The hearing officer's determinations that Dr. W has a disqualifying association in accordance with Rule 127.140, and that the compensable injury of [date of injury], does not extend to the diagnosed cervical disc herniation at C3-4 and lumbar disc bulges at L4-5 and L5-S1 are supported by sufficient evidence and are affirmed.

DISQUALIFYING ASSOCIATION OF DR. R

The issue before the hearing officer, as added prior to the CCH by the claimant's motion without objection by the self-insured, was as follows:

Does [Dr. W]², the designated doctor, and [Dr. R], the post-designated doctor RME, have a disqualifying association in accordance with Rule 127.140?

The claimant argued on appeal that Dr. R has a disqualifying association under Rule 126.5. However, as noted above, the issue that was requested by the claimant and added by the hearing officer was specific to Rule 127.140. Further, a disqualifying association under Rule 126.5 was not specifically argued by the parties at the CCH.

The hearing officer made no Findings of Fact, Conclusions of Law, or a Decision as to whether Dr. R has a disqualifying association in accordance with Rule 127.140. Because the hearing officer failed to make a determination on this issue, the hearing officer's decision is reversed as being incomplete. See Appeals Panel Decision (APD) 131684, decided September 13, 2013. We remand the issue of whether Dr. R has a disqualifying association in accordance with Rule 127.140 to the hearing officer for further action consistent with this decision.

MMI/IR

The hearing officer determined that the claimant reached MMI on August 29, 2013, with a five percent IR as certified by Dr. R. However, given that we have reversed the hearing officer's decision as incomplete and remanded the issue of

² We note that the hearing officer misidentified Dr. W as [Dr. Wi] in the issue statement.

whether Dr. R has a disqualifying association to the hearing officer, we also reverse the hearing officer's determination that the claimant reached MMI on August 29, 2013, with a five percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision. See APD 091660, decided December 30, 2009.

SUMMARY

We affirm the hearing officer's determination that Dr. W has a disqualifying association in accordance with Rule 127.140.

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to the diagnosed cervical disc herniation at C3-4 and lumbar disc bulges at L4-5 and L5-S1.

We reverse the hearing officer's decision as incomplete, and we remand the issue of whether Dr. R has a disqualifying association under Rule 127.140 for further action consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on August 29, 2013, with a five percent IR, and we remand the issues of MMI and IR for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the hearing officer is to make Findings of Fact, Conclusions of Law, and a Decision as to whether Dr. R, the post-designated doctor RME doctor, has a disqualifying association under Rule 127.140. The hearing officer is also to make a determination on the claimant's MMI and IR.

Should the hearing officer deem it necessary to send a letter of clarification to the designated doctor, we note that Dr. L is the designated doctor in this case. If the hearing officer deems it necessary to send a letter of clarification to the designated doctor, the hearing officer is to determine whether Dr. L is still qualified and available to be the designated doctor. The hearing officer is to advise the designated doctor that the [date of injury], compensable injury extends to a lumbar sprain/strain as stipulated to by the parties, but does not extend to the diagnosed cervical disc herniation at C3-4 and lumbar disc bulges at L4-5 and L5-S1 as administratively determined. The hearing officer is to request the designated doctor to give an opinion on the claimant's MMI and rate the entire compensable injury in accordance with the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May

16, 2000) considering the medical record and the certifying examination. The parties are to be provided with any new MMI/IR certification and allowed an opportunity to respond.

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 060721, decided June 12, 2006.

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

**SUPERINTENDENT
[ADDRESS]
[CITY], TEXAS [ZIP CODE].**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge