

APPEAL NO. 141226
FILED AUGUST 8, 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 April 24, 2014, in Fort Worth, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to complex regional pain syndrome (CRPS); (2) the respondent (claimant) had disability resulting from an injury sustained on [date of injury], from December 13, 2010, through the date of the CCH; (3) the claimant did not have good cause for failing to submit to the designated doctor's examination on May 24, 2012; (4) the appellant (carrier) is entitled to suspend temporary income benefits (TIBs) from May 24 through July 11, 2012, and from August 9 through August 30, 2012; and (4) the carrier is not entitled to suspend TIBs from July 12 to August 8, 2012, and from August 31, 2012, through the date of the CCH.

The carrier appealed the hearing officer's extent of injury and disability determinations on a sufficiency of the evidence point of error. The carrier also appealed the hearing officer's determination that the carrier is not entitled to suspend TIBs from July 12 to August 8, 2012, and from August 31, 2012, through the date of the CCH. The carrier contended that the hearing officer's determination violates the requirements of 28 TEX. ADMIN. CODE § 127.25 (Rule 127.25). The appeal file does not contain a response from the claimant to the carrier's appeal. The hearing officer's determinations that the claimant did not have good cause for failing to submit to the designated doctor's examination on May 24, 2012, and that the carrier is entitled to suspend TIBs from May 24 through July 11, 2012, and from August 9 through August 30, 2012, were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The claimant testified that she severely twisted her right ankle when she stepped in an overgrown culvert.

EXTENT OF INJURY AND DISABILITY

The hearing officer's determinations that the compensable injury of [date of injury], extends to CRPS and that the claimant had disability from December 13, 2010, through the date of the CCH is supported by sufficient evidence and is affirmed.

FAILURE TO ATTEND DESIGNATED DOCTOR EXAMINATIONS

The hearing officer determined that the claimant did not have good cause for failing to submit to the designated doctor's examination on May 24, 2012. As discussed above this determination was not appealed and has become final pursuant to Section 410.169.

In Finding of Fact No. 7, the hearing officer found that the claimant did not have good cause for not attending the designated doctor examination on August 9, 2012. That finding was not appealed. However, the hearing officer failed to make a conclusion of law or a decision on this issue. It is undisputed that the issue of whether the claimant had good cause for failing to submit to the designated doctor's examination on August 9, 2012, was an issue in dispute before the hearing officer and was actually litigated at the CCH. We reverse the hearing officer's decision as being incomplete and we render a new decision that the claimant did not have good cause for not attending the August 9, 2012, designated doctor's examination to conform to Finding of Fact No. 7 and the evidence.

SUSPENSION OF TIBs

The evidence established that a designated doctor examination was originally scheduled for May 21, 2012, but was rescheduled by (Churchill) to occur on May 24, 2012, and Churchill mailed a letter to the claimant at her confirmed home address notifying her of the date and time of the rescheduled examination. The claimant testified she did not recall receiving this letter. In evidence is a letter dated May 24, 2012, from Churchill sent to the claimant notifying her that she did not attend the appointment scheduled on that date. Evidence reflects that the claimant called the Texas Department of Insurance, Division of Workers' Compensation (Division) on July 12, 2012, to reschedule the examination. Churchill sent a letter to the claimant on July 13, 2012, notifying her that the appointment was rescheduled for August 9, 2012. The claimant testified that she attempted to attend the appointment scheduled for August 9, 2012, but that she arrived as the designated doctor was leaving because she had gotten lost. Evidence reflects that the claimant contacted the designated doctor's office on August 31, 2012, to reschedule the appointment. On that same date, the designated doctor contacted the Division to appoint a new designated doctor for the claimant. Evidence also reflects that the claimant called the Division on September 17, 2012, to request another designated doctor. A designated doctor appointment was scheduled for March 6, 2014, which the claimant attended.

The hearing officer noted in the Discussion portion of the decision that the claimant called the Division on July 12, 2012, to reschedule the May 24, 2012, designated doctor appointment she had missed, and determined that the carrier is not entitled to suspend TIBs from July 12 to August 8, 2012. The hearing officer also noted the following in the Discussion:

On August 31, 2012 [the] [c]laimant called the [d]esignated [d]octor's office to reschedule the appointment. There is no explanation in evidence as to why the appointment did not get rescheduled until March 6, 2014. The [d]esignated [d]octor asked to be redesignated so it was up to the Division to redesignate a [d]esignated [d]octor and get an examination scheduled. The Division should have reappointed a [d]esignated [d]octor. [The] [c]laimant would have good cause for not attending a [d]esignated [d]octor appointment until March 6, 2014, because no examination was ever scheduled.

The hearing officer makes clear in his decision that he based his determination that the carrier is not entitled to suspend TIBs from July 12 to August 8, 2012, because the claimant called the Division to reschedule the designated doctor examination on July 12, 2012, and because a designated doctor appointment was rescheduled for August 9, 2012, which the claimant failed to attend. It is also clear that the hearing

officer based his determination that the carrier is not entitled to suspend TIBs from August 31, 2012, through the date of the CCH because the claimant called the designated doctor's office on August 31, 2012, to reschedule the examination and a designated doctor examination was not rescheduled until March 6, 2014.

The carrier contended on appeal that the hearing officer's determination that the carrier is not entitled to suspend TIBs from July 12 to August 8, 2012, and from August 31, 2012, through the date of the CCH violates the requirements of Rule 127.25. The carrier argued that because the hearing officer determined the claimant did not have good cause for failing to attend the May 24, 2012, and August 9, 2012, designated doctor's examinations, the carrier is entitled to suspend TIBs until the date the claimant submitted to the designated doctor examination.

The hearing officer correctly noted that the rule governing a claimant's failure to attend a designated doctor appointment at the time of the designated doctor examinations in this case was Rule 127.25, effective from February 11, 2011, through August 31, 2012. That rule provides the following:

- (a) An insurance carrier may suspend [TIBs] if an injured employee, without good cause, fails to attend a designated doctor examination.
- (b) In the absence of a finding by the [D]ivision to the contrary, an insurance carrier may presume that the injured employee did not have good cause to fail to attend the examination if by the day the examination was originally scheduled to occur the injured employee has both: (1) failed to submit to the examination; and (2) failed to contact the designated doctor's office to reschedule the examination.
- (c) If, after the insurance carrier suspends TIBs pursuant to this subsection, the injured employee contacts the designated doctor to reschedule the examination, the designated doctor shall schedule the examination to occur as soon as possible, but not later than the 21st day after the injured employee contacted the doctor. The insurance carrier shall reinstate TIBs effective as of the date the injured employee submitted to the examination unless the report of the designated doctor indicates that the injured employee has reached [maximum medical improvement (MMI)] or is otherwise not eligible for income benefits. The re-initiation of TIBs shall occur no later than the seventh day following:
 - (1) the date the insurance carrier was notified that the injured employee submitted to the examination; or
 - (2) the date that the insurance carrier was notified that the [D]ivision found that the injured employee had good cause for not attending the examination.
- (d) An injured employee is not entitled to TIBs for a period during which the insurance carrier suspended benefits pursuant to this subsection unless the injured

employee later submits to the examination and the [D]ivision finds or the insurance carrier determines that the injured employee had good cause for failure to attend the examination.

(e) This section becomes effective on February 1, 2011.

The hearing officer determined that the claimant did not have good cause for failing to submit to the May 24, 2012, designated doctor's examination, and as explained above, we have rendered a new decision that the claimant did not have good cause for failing to submit to the August 9, 2012, designated doctor's examination to conform to the hearing officer's unappealed Finding of Fact No. 7 and the evidence. The carrier is entitled to suspend TIBs because the claimant did not have good cause for failing to attend the May 24, 2012, and August 9, 2012, designated doctor examinations. Rule 127.25 requires actual attendance of the designated doctor examination; merely calling to reschedule a designated doctor examination is insufficient to meet the requirements of Rule 127.25. Additionally, Rule 127.25 does not provide for an exception to the suspension of TIBs based on a delay in the subsequent appointment of a designated doctor examination. Therefore, that portion of the hearing officer's determination that the carrier is not entitled to suspend TIBs from July 12 to August 8, 2012, and from August 31, 2012, through March 5, 2014, is not in compliance with Rule 127.25. Accordingly, we reverse that portion of the hearing officer's determination, and we render a new decision that the carrier is entitled to suspend TIBs from July 12 to August 8, 2012, and from August 31, 2012, through March 5, 2014.

As previously discussed, the claimant attended the March 6, 2014, designated doctor examination. Rule 127.25(c) provides that the carrier shall reinstate TIBs effective as of the date the injured employee submitted to the examination unless the report of the designated doctor indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits. Based on the foregoing, we affirm that portion of the hearing officer's determination that the carrier is not entitled to suspend TIBs from March 6, 2014, through the date of the CCH.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], extends to CRPS.

We affirm the hearing officer's determination that the claimant had disability resulting from an injury sustained on [date of injury], from December 13, 2010, through the date of the CCH.

We reverse the hearing officer's decision as incomplete, and we render a new decision that the claimant did not have good cause for failing to submit to the

designated doctor's examination on August 9, 2012, to conform to the hearing officer's unappealed Finding of Fact No. 7 and the evidence.

We reverse that portion of the hearing officer's determination that the carrier is not entitled to suspend TIBs from July 12 to August 8, 2012, and from August 31, 2012, through March 5, 2014, and we render a new decision that the carrier is entitled to suspend TIBs from July 12 to August 8, 2012, and from August 31, 2012, through March 5, 2014.

We affirm that portion of the hearing officer's determination that the carrier is not entitled to suspend TIBs from March 6, 2014, through the date of the CCH.

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

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge