

APPEAL NO. 142592
JANUARY 26, 2015

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 October 21, 2014, in Dallas, 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], does not extend to a right shoulder rotator cuff tear with post-traumatic impingement and a right shoulder infraspinatus tendon tear; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 18, 2013, with an impairment rating (IR) of zero percent; (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. L), D.C., as designated doctor to address MMI and IR in accordance with 28 TEX. ADMIN. CODE § 127.130(b) (Rule 127.130(b)); and (4) the Division should not have appointed (Dr. W), D.O., as designated doctor to evaluate the claimant for the compensable injury of [Date of Injury], to determine the extent of injury.

The claimant appealed all of the hearing officer's determinations on a sufficiency of the evidence point of error. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], that extends to a right shoulder sprain/strain. The claimant testified he injured his right shoulder when he was painting a wall while standing on a lift that malfunctioned.

**EXTENT OF INJURY, MMI/IR, AND APPOINTMENT OF DR. L AS
DESIGNATED DOCTOR TO DETERMINE MMI AND IR**

The hearing officer's determinations that: (1) the compensable injury of [Date of Injury], does not extend to a right shoulder rotator cuff tear with post-traumatic impingement and a right shoulder infraspinatus tendon tear; (2) the claimant reached MMI on April 18, 2013, with an IR of zero percent; and (3) the Division appointed Dr. L as designated doctor to address MMI and IR in accordance with Rule 127.130(b) are supported by sufficient evidence and are affirmed.

APPOINTMENT OF DR. W AS DESIGNATED DOCTOR TO DETERMINE EXTENT OF INJURY

The hearing officer also determined that the Division should not have appointed Dr. W as designated doctor to evaluate the claimant for the compensable injury of [Date of Injury], to determine the extent of injury. The hearing officer cited Rule 127.5(d) in the Discussion portion of her decision, and stated that:

The Division appointed [Dr. L] as designated doctor to address, among other things, [MMI], [IR], and extent of injury in accordance with Division Rule 127.130(b). Furthermore, [Dr. L] previously evaluated [the] [c]laimant on two separate occasions to determine the extent of [the] [c]laimant's compensable injury. Consequently, the Division should not have appointed [Dr. W] as designated doctor to evaluate [the] [c]laimant for the compensable injury of [Date of Injury], to determine the extent of injury.

Rule 127.5(d) provides in part that if the Division has previously assigned a designated doctor to the claim at the time a request is made, the Division shall use that doctor again unless the Division has authorized or required the doctor to stop providing services on the claim in accordance with Rule 127.130.

An order of an administrative body is presumed to be valid and the burden of producing evidence establishing the invalidity of the administrative action is clearly on the party challenging the action. *Herron v. City of Abilene*, 528 S.W.2d 349 (Tex. Civ. App.-Eastland 1975, writ ref'd). It is undisputed, and the hearing officer noted in her decision, that the carrier in this case raised the issue that the Division should not have appointed Dr. W as designated doctor to determine the extent of the compensable injury. The Division's appointment of Dr. W to determine the extent of the claimant's compensable injury is presumed to be valid, and the carrier had the burden of proof to establish that the Division's appointment of Dr. W was invalid.

The record contained no evidence that explained why it would have been improper for the Division to appoint Dr. W as designated doctor to determine the extent of the compensable injury or that the Division did not follow Rule 127.5(d) or any other provision. The carrier did not meet its burden of proof to establish that the Division should not have appointed Dr. W to determine the extent of the claimant's compensable injury. Therefore, the hearing officer's determination that the Division should not have appointed Dr. W as designated doctor to evaluate the claimant for the compensable injury of [Date of Injury], to determine the extent of injury is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer's determination, and we

render a new decision that the Division should have appointed Dr. W as designated doctor to evaluate the claimant for the compensable injury of [Date of Injury], to determine the extent of injury.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to a right shoulder rotator cuff tear with post-traumatic impingement and a right shoulder infraspinatus tendon tear.

We affirm the hearing officer's determination that the claimant reached MMI on April 18, 2013, with an IR of zero percent.

We affirm the hearing officer's determination that the Division appointed Dr. L as designated doctor to address MMI and IR in accordance with Rule 127.130(b).

We reverse the hearing officer's determination that the Division should not have appointed Dr. W as designated doctor to evaluate the claimant for the compensable injury of [Date of Injury], and we render a new decision that the Division should have appointed Dr. W as designated doctor to evaluate the claimant for the compensable injury of [Date of Injury], to determine the extent of injury.

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:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge