

APPEAL NO. 160307  
FILED APRIL 26, 2016

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 September 2, 2015, with the record closing on January 19, 2016, in Houston, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) (Dr. G) was not appointed to serve as designated doctor in accordance with Section 408.0041 and 28 TEX. ADMIN. CODE § 127.130 (Rule 127.130); (2) the respondent (claimant) reached maximum medical improvement (MMI) on December 7, 2014; (3) the claimant's impairment rating (IR) is four percent; (4) the first certification of MMI and assigned IR from Dr. G dated March 13, 2014, did not become final under Section 408.123 and Rule 130.12; and (5) the claimant had disability resulting from the compensable injury of (date of injury), during the period beginning February 26 through December 7, 2014.

The appellant (carrier) appeals the hearing officer's determinations of MMI, IR, finality and disability. The carrier additionally appeals the hearing officer's determinations that Dr. G was not appointed to serve as designated doctor in accordance with Section 408.0041 and Rule 127.130. The carrier argues that the hearing officer erred in excluding Carrier's Exhibit V. The carrier also argues that the hearing officer failed to make a conclusion of law regarding whether Dr. G had a disqualifying association under Rule 127.140. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part, reformed in part, and reversed and rendered in part.

The parties stipulated that the carrier has accepted a compensable injury to include a right knee ACL tear and right knee medial and lateral meniscus tears; and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed Dr. G as designated doctor for purposes of MMI, IR, disability, and return to work. We note that the parties stipulated that on March 13, 2014, Dr. G certified the claimant reached MMI on February 25, 2014, with a four percent IR, and was the first doctor to certify MMI and assign an IR. The hearing officer mistakenly referenced the date the claimant reached MMI, February 25, 2014, as the date of the certification rather than March 13, 2014. We reform stipulation 1.E. to reflect the actual stipulation of the parties as follows: On March 13, 2014, Dr. G certified the claimant reached MMI on February 25, 2014, with a four percent IR, and was the first doctor to certify MMI and assign an IR.

The carrier asserts that the hearing officer erred in excluding Carrier's Exhibit V. After the conclusion of the CCH but prior to the record closing the carrier offered tracking information from the United States Postal Service to provide evidence of delivery of the first certification to the claimant. In an e-mail exchange between the hearing officer and the parties, made part of the record as a hearing officer exhibit, Hearing Officer's Exhibit No. 6, the hearing officer stated that she sustained the "claimant's objection to the admission of these documents as due diligence in obtaining the documents has not been demonstrated, nor were the documents promptly provided to [the] [c]laimant and the Division after they were obtained." We note that the hearing officer mistakenly noted that Hearing Officer's Exhibits Nos. 1 through 5 were admitted but the record reflects that there were six hearing officer exhibits. To obtain reversal of a decision based on an error in the admission or exclusion of evidence, the appellant must show that the evidentiary ruling was reasonably calculated to cause and probably did cause the rendition of an improper decision. *Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In this case, the hearing officer did not err in the exclusion of the track and confirm documents of the United States Postal Service, Carrier's Exhibit V.

#### **DISABILITY**

The hearing officer's determination that the claimant had disability resulting from the compensable injury of (date of injury), during the period beginning February 26 through December 7, 2014, is supported by sufficient evidence and is affirmed.

#### **FINALITY OF THE FIRST CERTIFICATION**

The hearing officer's determination that the first certification of MMI and assigned IR from Dr. G dated March 13, 2014, did not become final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

#### **APPOINTMENT OF DESIGNATED DOCTOR**

The hearing officer's determination that Dr. G was not appointed to serve as designated doctor in accordance with Section 408.0041 and Rule 127.130 is supported by sufficient evidence and is affirmed.

#### **MMI**

The hearing officer's determination that the claimant reached MMI on December 7, 2014, is supported by sufficient evidence and is affirmed.

## **IR**

The hearing officer's determination that the claimant's IR is four percent is supported by sufficient evidence and is affirmed.

## **DISQUALIFYING ASSOCIATION**

The carrier notes in its appeal that the hearing officer failed to make a conclusion of law regarding the issue of a disqualifying association. The issue of disqualifying association was added at the CCH by the hearing officer because it was actually litigated. Rule 127.140(a) defines a disqualifying association as any association that may reasonably be perceived as having potential to influence the conduct or decision of a designated doctor. The hearing officer in Finding of Fact No. 5 found that both Dr. G, the designated doctor, and (Dr. W), a doctor with whom the claimant treated, shared a business address and phone and fax numbers through Genesis, a scheduling company. There is sufficient evidence to support this finding of fact. However, the carrier correctly noted that the hearing officer failed to make a conclusion of law regarding this issue. Accordingly, we reverse the hearing officer's decision as being incomplete and render a new decision that Dr. G is disqualified as the designated doctor due to a disqualifying association as described by Rule 127.140. See Appeals Panel Decision 131335, decided July 15, 2013.

## **SUMMARY**

We affirm the hearing officer's determination that the claimant had disability resulting from the compensable injury of (date of injury), during the period beginning February 26 through December 7, 2014.

We affirm the hearing officer's determination that the first certification of MMI and assigned IR from Dr. G dated March 13, 2014, did not become final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determination that Dr. G was not appointed to serve as designated doctor in accordance with Section 408.0041 and Rule 127.130.

We affirm the hearing officer's determination that the claimant reached MMI on December 7, 2014.

We affirm the hearing officer's determination that the claimant's IR is four percent.

We reform stipulation 1.E. to reflect the actual stipulation of the parties as follows: On March 13, 2014, Dr. G certified the claimant reached MMI on February 25, 2014, with a four percent IR, and was the first doctor to certify MMI and assign an IR.

We reverse the hearing officer's decision as being incomplete and render a new decision that Dr. G is disqualified as the designated doctor due to a disqualifying association as described by Rule 127.140.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TX 75201-3136.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge