APPEAL NO. 950352

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing was held in (city), Texas, on January 17, 1995, (hearing officer) presiding as hearing officer. He concluded that the respondent (claimant) had shown by a preponderance of the evidence that his mental and behavioral disorders arose out of his (date of injury), compensable injury and are a part of the compensable injury, that the appellant (carrier) had not specifically contested compensability of claimant's mental and behavioral disorders as a part of the injury, the claimant's date of maximum medical improvement (MMI) was "4/7/94" in accordance with the treating doctor's report, and that the Texas Workers' Compensation Commission (Commission) does not adopt the report of the Commission-selected designated doctor. He directed the Commission to select another designated doctor to assign an impairment rating (IR) that accounts for both the claimant's physical and mental condition. The carrier appeals urging error in one of the hearing officer's findings of fact, one of his conclusions of law, and the hearings officer's order to appoint another designated doctor. No response has been filed.

DECISION

Finding error we reverse and remand.

The claimant sustained steam burns over 60% of his body on (date of injury), and was subsequently hospitalized for some five weeks. He was treated for the burns by (Dr. D), a surgeon, and was treated by a psychiatrist, (Dr. FUL), for depression and post traumatic stress disorder. On April 12, 1994, Dr. D certified that the claimant reached MMI on "4/7/94" with a 61% IR which included 50% relating to the burns and 40% for mental and behavioral disorders. The carrier disputed the treating doctor's IR, assessed a "reasonable rating" of 20% and requested a designated doctor. (Dr. F) (a Clinical Professor, Plastic Surgery, with [a medical school]) was appointed and on June 10, 1994, examined the claimant and rendered a report certifying MMI as June 10, 1994, with a zero percent IR. Dr. F stated in his report that "(claimant) will be left with no functional disability other than cosmetic embarrassment of pigment changes" and that "[t]here is no reason to restrict his activity in areas of intense heat or cold as his burn was superficial without significant embarrassment to his sweat mechanism or vascular capacity." Subsequently, the Commission, in its first of two contacts with the designated doctor, requested some clarification and the accomplishment of an updated form. In a July 18, 1994, letter, Dr. F stated he had the claimant's medical records at the time he examined him and stated that he was "perplexed as to how Dr. D arrived at a 61% IR. Dr. F also stated that it was not an oversight that he did not render any IR for mental and behavioral disorders since he specifically questioned the claimant about any mental problems or anxieties, that the claimant stated he was not aware of any although his wife says he thrashes in his sleep and that she believes he has emotional impairment. Dr. F acknowledges his lack of expertise in behavioral disorders. Dr. F adhered to his previous zero percent IR.

During or following a benefit review conference, the Commission, pursuant to an agreement by the parties, again contacted Dr. F on August 12, 1994. Specifically, Dr. F was asked if he used the correct version of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), was asked to review and comment on Dr. D's report, and asked whether he was provided with medical reports concerning mental and behavioral disorders, and if so, whether he reviewed the reports. Apparently, no medical reports involving mental disorders were submitted to Dr. F either earlier or at the time of this second inquiry. In any event, Dr. F responded that he used the correct version of the AMA Guides and had even compared his results with the latest version of the guides with identical results. He stated he had no idea why Dr. D assessed his rating and that he, Dr. F, independently evaluated the claimant and pointed out his disagreement with Dr. D. He further stated that "I have no medical reports regarding (claimant's) mental and behavioral disorders and do not hold myself out to be an expert in mental disorders as I have stated in my reports." He suggested that Dr. D also had no expertise in the mental and behavioral areas and that such determinations should be made by an expert in the area.

The finding with which the carrier takes exception is:

FINDING OF FACT

18.Dr. F's report does not proport [sic] to evaluate behavioral problems, if any, suffered by claimant as a result of his industrial accident, and is therefore is [sic] not an evaluation of the total injury. No purpose can be served by referring the case back to Dr. F at this point.

The conclusion of law with which the carrier takes exception is:

CONCLUSION OF LAW

7.Because Dr. F: (i) served as a Commission designated doctor; and (ii) Dr. F's report did not address all of the aspects of Claimant's compensable injury, his report on impairment is not given weight and cannot be adopted by the Commission as the correct [IR].

The hearing officer ordered that another designated doctor be selected, also objected to by the carrier.

We initially note that the hearing officer only found that the claimant's mental and behavioral disorders, "if any," are the result of the compensable injury, but concluded that the claimant had shown by a preponderance of the evidence that they were a part of the compensable injury. However, only the finding of fact and conclusion of law set out above are the subject of this appeal, and for purposes of this appeal we proceed on the premise that mental and behavioral disorders are part of the compensable injury.

Regarding the finding in issue, while it is true that Dr. F did not include any rating for mental and behavioral disorders, he did not ignore the matter. Rather, in his first response to the Commission he specifically stated that it was not an oversight that he found no impairment for mental and behavioral disorders and that he had discussed this matter with the claimant. He did acknowledge a lack of expertise in the area of mental and behavioral disorders, however, this is certainly not a basis to reject a designated doctor's report. We have previously stated that a designated doctor need not be a specialist in any given area to serve in that function although it might be appropriate in particular circumstances. Texas Workers' Compensation Commission Appeal No. 93062, decided March 1, 1993. And, a designated doctor is at liberty to adopt (or reject) the views of other doctors, including specialists, in arriving at his own independent assessment of impairment of the various components of the body involved in the injury. Texas Workers' Compensation Commission Appeal No. 94435, decided May 27, 1994; Texas Workers' Compensation Commission Appeal No. 94480, decided June 3, 1994. We have not held and know of no requirement that a separate designated doctor with a particular specialty be required to evaluate each separate component of an injury. Further, we have consistently held that the designated doctor occupies a unique position under the 1989 Act, that his properly executed report is clothed with presumptive weight, and that it is not overcome except where the great weight of the other medical evidence is to the contrary. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993; Section 408.125(e). Under the 1989 Act, the designated doctor is placed in a position to resolve conflicting medical opinions that are commonly found in cases and to resolve issues of MMI and IR. Texas Workers' Compensation Commission Appeal No. 94290, decided April 20, 1994. Because of this, we have held that the appointment of a second designated doctor is very limited and is restricted to situations where the original designated doctor cannot or refuses to comply with the requirements of the 1989 Act. Texas Workers' Compensation Commission Appeal No. 941710, decided February 3, 1995; Texas Workers' Compensation Commission Appeal No. 93045, decided March 3, 1993. From the evidence of record, that does not seem to be the case here. Indeed, Dr. F rendered his report, stated his reasoning, responded twice to inquiries by the Commission and adhered to his certification. Nothing suggests that he cannot or refused to comply with the statutory and regulatory provisions.

Under these conditions, we do not find any justification for the appointment of a second designated doctor as ordered by the hearing officer. However, because it appears that the designated doctor did not have the medical records regarding the claimant's mental and behavioral disorders (other that as reflected in Dr. D's records and report), and apparently no such records were provided to Dr. F even though the Commission twice inquired (apparently without taking any action to provide such records), in arriving at his determination, corrective action is appropriate. The records in question should be provided to Dr. F for his review and consideration of his IR assessment and for possible revision or amendment, if any, that he deems medically proper and appropriate. We have recognized that an amendment or revision can be accomplished for proper reason in a reasonable

period of time, particularly where a designated doctor's first report, on its face, advises that it only addresses a segment of the overall injury. Texas Workers' Compensation Commission Appeal No. 941645, decided January 23, 1995. In that case the designated doctor indicated that a neurological injury was being evaluated by another doctor and needed to be incorporated into the overall IR.

For the foregoing reasons, we reverse so much of the decision and order that directs the Commission to select another designated doctor, and remand the case to have the Commission provide the medical records in question for review by Dr. F and for Dr. F to reconsider his IR in light of such records or other pertinent medical data (which could include reference to a specialist if needed) as he deems necessary and to make appropriate revisions or amendments if any are required in his professional opinion. 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 Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Tommy W. Lueders
Appeals Judge