APPEAL NO. 020385
FILED MARCH 18, 2002

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 January 14, 2002. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is nine percent, as certified by Dr. C, the treating doctor, on December 20, 1993. The claimant appeals, arguing that she is entitled to be rated by a designated doctor, and that has never happened. The respondent (carrier) replies, urging affirmance.

DECISION

Reversed and remanded.

The claimant sustained a compensable injury to her neck, bilateral shoulders, and lower back on _____. She was evaluated by Dr. W, a carrier-selected independent medical examination doctor, who certified that the claimant was at maximum medical improvement (MMI) on March 13, 1993, with a zero percent IR. The claimant disputed the MMI/IR certification of Dr. W, and Dr. C was appointed as the designated doctor on May 27, 1993. Dr. C saw the claimant on June 16, 1993, but did not certify MMI or IR at that time, writing on the Report of Medical Evaluation (TWCC-69):

> [Claimant] seen at request of [Texas Workers' Compensation Commission (Commission)] for dispute resolution. No medical received at time of exam. Report of findings and final TWCC 69 will be filed when medical information and records are received.

Apparently, such records were not forthcoming, and Dr. C never completed a designated doctor examination and report on the claimant.

Subsequently (on September 20, 1993), the claimant submitted an Employee's Request to Change Treating Doctors (TWCC-53), seeking to change to Dr. C as her treating doctor. Dr. C expressed concern about becoming the treating doctor, as he had previously been appointed as the designated doctor. The request to change treating doctors to Dr. C was approved by the Commission on October 23, 1993. At least as of the time Dr. C became the claimant's treating doctor, he was disqualified from being the designated doctor for any future dispute regarding the claimant's MMI or IR. A doctor cannot function as both a treating and designated doctor at the same time because the designated doctor would no longer be impartial. Texas Workers' Compensation Commission Appeal No. 94042, decided February 22, 1994. *See also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.10(b)(8) (Rule 126.10(b)(8)), effective December 1, 1995, and July 17, 2001.

Claimant's Exhibit No. 6 contains correspondence between Dr. C and the

Commission to the effect that the carrier had sent Dr. C a letter, recognizing that he had become the claimant's treating doctor. In response to a Commission request, Dr. C prepared a TWCC-69 as the treating doctor, certifying the claimant reached MMI on the statutory date (November 12, 1993[1]) with an IR of nine percent based on the lumbar spine area and the cervical subcomponent for cervical pain. The claimant's bilateral shoulder injury was not included in that IR.

There has been a dispute regarding the claimant's IR since 1993 and there is no evidence that an IR assigned to the claimant has become final by agreement of the parties or a final adjudication. There is no authority under the 1989 Act or the rules to bring an assigned IR to finality in the absence of an agreement of the parties or a final decision under the dispute resolution process. Section 408.125 (effective September 1, 1995) provides in part:

> DISPUTE AS TO [IR].
>
> (a) If an [IR] is disputed, the commission shall direct the employee to be examined by a designated doctor chosen by mutual agreement of the parties.
>
> (b) If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission.
>
> (c) The designated doctor shall report in writing to the commission.
>
> (d) If the designated doctor is chosen by the parties, the commission shall adopt the [IR] made by the designated doctor.
>
> (e) If the designated doctor is chosen by the commission, the report of the designated doctor shall have presumptive weight, and the commission shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the [IR] contained in the report of the designated doctor chosen by the commission, the commission shall adopt the [IR] of one of the other doctors.

In this case, while in the status of being the designated doctor, Dr. C did not certify MMI or assign an IR for the claimant. It was only after being disqualified as the designated doctor by becoming the treating doctor that Dr. C certified an MMI date and assigned an IR for the claimant. Under the provisions of Section 408.125, no determination can be

[1] The parties effectively agreed on the record that the claimant reached MMI on the statutory MMI date, November 12, 1993, as certified by Dr. C.

made regarding the claimant's IR because there is no report from a designated doctor.

The claimant's bilateral carpal tunnel syndrome (BCTS) was determined to be a result of her compensable injury at a CCH held on August 31, 1998. That decision was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 982300, decided November 9, 1998 (Unpublished). The carrier appealed that decision to the County District Court on December 17, 1998, but eventually moved for nonsuit with prejudice, which motion was granted on October 17, 2000. Despite the discussion on the record to the contrary, we see no logical reason to exclude the BCTS from the designated doctor's evaluation of the claimant's compensable injury. The claimant's BCTS must be evaluated in determining her IR.

The case is remanded to the hearing officer for the appointment of a designated doctor to rate the claimant's IR. The designated doctor must rate the entire compensable injury based on the claimant's condition on the MMI date. The designated doctor should be advised that the compensable injury includes the neck, bilateral shoulders, lower back, and BCTS. Further, as difficult as it may be, the IR assigned must be based on the designated doctor's determination of the claimant's impairment on the date the claimant reached MMI.

Requiring hearing officers to obtain MMI agreements and appoint a designated doctor is an inefficient process. The parties are encouraged to withdraw this dispute and request a benefit review conference to expedite the resolution of their dispute.

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 (amended June 17, 2001). *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

C T CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.

Michael B. McShane
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge