

APPEAL NO. 022315  
FILED OCTOBER 30, 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 was held on August 23, 2002. The hearing officer determined that the respondent (claimant) had disability from March 8 to April 8, 2002. In its appeal, the appellant (carrier) argues that the hearing officer should have determined that it was entitled to suspend temporary income benefits (TIBs) for the period from March 8 to April 8, 2002, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(c) (Rule 130.6(c)) because of the claimant's failure to submit to the designated doctor's examination. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Reversed and remanded.

In the relevant portion of the benefit review conference (BRC) report, the benefit review officer stated “[b]ased on the information available at the [BRC], it does not appear the carrier should be relieved from liability for [TIBs] for the stated period. There is no provision in the Act or Rules that allows a carrier to stop [TIBs] based on the interruption or noncompletion of a designated doctor exam.” Both the ombudsman assisting the claimant and the carrier noted at the hearing that during the period from March 8 to April 8, 2002, the carrier had suspended TIBs after the claimant did not complete the designated doctor's examination of March 8, 2002. On April 8, 2002, the claimant completed an examination with a second designated doctor. Thus, it is apparent that the true issue before the hearing officer in this instance was whether the carrier could suspend TIBs for the period from March 8 to April 8, 2002, because the first designated doctor examination was not completed, which the carrier characterized as “functional nonattendance.” However, the hearing officer did not resolve that issue. To the contrary, in Conclusion of Law No. 3, the hearing officer stated “[r]egardless of what happened or did not happen at the designated doctor examination, Claimant was unable to obtain and retain employment at his preinjury wage from March 8, 2002, to April 8, 2002, which is what is required to establish disability pursuant to . . . Section 401.011(16).” Although the issue before the hearing officer was not properly framed, the true nature of the dispute was evident. It was incumbent upon the hearing officer to resolve that dispute. Accordingly, we remand the case for the hearing officer to determine whether the carrier acted properly in suspending TIBs in this instance pursuant to Section 408.0041(h) and Rule 130.6(c). In interpreting Section 408.004(e) and Rule 126.6(h), corresponding provisions that permits the carrier to suspend TIBs for failure to attend a required medical examination (RME) appointment, the Appeals Panel construed the term “attend” in Rule 126.6(h) “to include and require *submission* to an RME.” Texas Workers' Compensation Commission Appeal No. 010407, decided April 5, 2001 (emphasis in original). It seems that Rule 130.6 likewise would require that the claimant actually submit to the examination rather than requiring mere attendance.

Thus, in resolving the issue of whether the carrier acted properly in suspending TIBs in this instance, the hearing officer must determine if the claimant had good cause for the failure to submit to the initial designated doctor appointment.

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 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**JOSEPH KELLY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Veronica Lopez  
Appeals Judge

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Robert W. Potts  
Appeals Judge