

APPEAL NO. 030510
FILED APRIL 16, 2003

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 January 28, 2003. The hearing officer resolved the disputed issues by determining that the appellant (claimant) reached maximum medical improvement (MMI) on December 21, 2000, with a 10% impairment rating (IR). The claimant appeals this decision and argues that the hearing officer erred in failing to add his requested additional disputed issue. The respondent (carrier) responds, asserting that the claimant did not timely file a request for review, that the hearing officer did not err in declining to add the additional disputed issue requested by the claimant, and that the decision should be affirmed.

DECISION

Affirmed.

The carrier contends that the claimant's request for review was not timely filed. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Commission records indicate that the hearing officer's decision and order was mailed to the claimant on January 31, 2003, and was deemed received by the claimant on February 5, 2003. See Rule 102.5(d). In accordance with Section 410.202 and Rule 143.3, the claimant's appeal had to be filed no later than February 27, 2003. The claimant's appeal bears a Commission file stamp indicating that it was hand delivered on February 27, 2003, and, therefore, was timely filed.

The claimant asserts on appeal that the hearing officer erred in denying his request to add the following issue: "Was [the designated doctor] qualified to give an opinion as to [the claimant's] date of [MMI] and/or [IR]?" The claimant filed his request to add the issue via his response to the benefit review officer's report, which was received on January 7, 2003. The evidence reflects that the hearing officer denied the request on January 9, 2003. At the hearing, the claimant again requested that the hearing officer add the issue, the carrier objected, and the hearing officer reiterated that she declined to add the issue, noting that no good cause had been shown.

In the present case, the designated doctor, a chiropractor, was appointed in December 2000, at which time the claimant's treating doctor was also a chiropractor.

Prior to the designated doctor's appointment, the claimant received epidural steroid injections. Subsequent to the designated doctor's examination and MMI/IR certification, the claimant had a spinal cord stimulator implanted in July 2001, and the Commission requested clarification from the doctor relating to the stimulator and its potential effect on MMI/IR. The designated doctor did not reexamine the claimant and confirmed his MMI/IR certification.

Section 408.0041(b) and Rule 130.5(d)(2) establish the requirements for appointing a designated doctor and scheduling an examination for purposes of MMI/IR. Under Rule 130.5(d)(2), effective January 2, 2002, the Commission is charged with the responsibility of ensuring that a designated doctor is still qualified before scheduling an appointment to reexamine the claimant. We noted in Texas Workers' Compensation Commission Appeal No. 022467, decided November 14, 2002, that Rule 130.5(d)(2) provides no exceptions for claims in progress prior to the effective date and that the Commission cannot be relieved of its obligation to ensure compliance with the rule. However, we cannot agree that the hearing officer committed reversible error in declining to add the requested issue because Section 408.0041(b) and Rule 130.5(d) apply to appointments of and reexaminations with designated doctors, neither of which occurred in this case after January 2, 2002. We note that Rule 130.6(b)(4), effective at the time of the designated doctor's appointment, provided that, to the extent possible, the designated doctor be in the same discipline as the treating doctor. For this reason, we cannot agree that any error on the part of the hearing officer in refusing to add the requested issue rises to the level of reversible error.

The hearing officer did not err in determining that, in accordance with the designated doctor's report, the claimant reached MMI on December 21, 2000, with a 10% IR. Section 408.125(e) provides that 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. Pursuant to Rule 130.6(i), the designated doctor's response to a Commission request for clarification is also considered to have presumptive weight as it is part of the designated doctor's opinion. See *also* Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's report and his subsequent confirmation of his initial MMI/IR certification. Consequently, the hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Section 408.125(e).

The hearing officer's decision and order is affirmed.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge