

APPEAL NO. 050265  
FILED MARCH 25, 2005

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 18, 2005. The parties reached an agreement on the disputed issue. Consistent with the parties' agreement, the hearing officer determined that the whole person impairment rating (IR) is 15%, pursuant to the opinion of the designated doctor. The appellant (carrier) appealed, disputing the stipulated date of maximum medical improvement (MMI), July 9, 2004. The carrier contends that the parties stipulated to the July 9, 2004, date of MMI by mistake. The carrier contends that the July date was the date of the examination of the designated doctor rather than the date the designated doctor certified MMI. The appeal file does not contain a response from the respondent (claimant). The carrier did not appeal the hearing officer's determination, in accordance with the agreement of the parties, that the IR is 15%.

DECISION

Reversed and remanded.

One of the stipulations entered into by the parties was that the claimant reached MMI on July 9, 2004. The carrier attached to its appeal both a Report of Medical Evaluation (TWCC-69) from the claimant's treating doctor and a TWCC-69 from the designated doctor, along with their respective narrative reports. The attached documents reflect that both the treating doctor and the designated doctor certify that the claimant reached MMI on March 16, 2004. The documents also reflect that the designated doctor's examination took place on July 9, 2004. The carrier contends that the parties mistakenly stipulated to the date of the designated doctor's examination rather than the date the designated doctor certified that the claimant reached MMI.

Section 410.166 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provide, in part, that an oral agreement of the parties that is preserved in the record is final and binding on the date made. Rule 147.4(d)(1) further provides, in part, that an oral agreement is binding on a carrier through the final conclusion of all matters relating to the claim, whether before the Texas Workers' Compensation Commission (Commission) or in court, unless set aside by the Commission or court on a finding of fraud, newly discovered evidence, or other good and sufficient cause. Whether a good and sufficient cause exists is to be determined from the facts as they stand at the time the party seeks to set aside the agreement. Texas Workers' Compensation Commission Appeal No. 950625, decided June 5, 1995.

We reverse and remand the hearing officer's decision for a determination of whether good cause exists to set aside the parties' stipulation as to the date of MMI. If good cause is found to exist, the hearing officer should take evidence and/or receive a new agreement regarding the date of MMI. We note that Rule 130.1(c)(3) provides that

an assignment of an IR shall be based on the injured employee's condition as of the MMI date.

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 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 **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge