

APPEAL NO. 131727  
FILED SEPTEMBER 3, 2013

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 July 2, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) has not reached maximum medical improvement (MMI) and because the claimant has not reached MMI, an impairment rating (IR) cannot be assigned. The appellant (carrier) appeals the hearing officer's determination of MMI and IR. The carrier contends that the hearing officer failed to give the designated doctor's report presumptive weight and erred by not considering the report of [Dr. F] because he incorrectly stated the MMI date was a prospective date. The carrier further contends that the report of [Dr. W] was not supported by a preponderance of the evidence. The claimant responded, urging affirmance of the hearing officer's determinations.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that [Dr. C] was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor for purposes of MMI and IR.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer noted in his Background Information section of the decision that the certification from Dr. C, the designated doctor, was contrary to the preponderance of the evidence noting that the claimant "had just begun physical therapy and his condition improved as was expected." The hearing officer then stated that Dr. F, a doctor selected by the treating doctor to act in his place assigned a prospective date of MMI noting that Dr. F examined the claimant on April 17, 2013, but certified that the claimant reached MMI on April 18, 2013. However, a review of the

record reflects that Dr. F actually certified that the claimant reached MMI on April 16, 2013, based on an examination date of April 17, 2013, which would not be a prospective MMI date. Because of this misstatement of a material fact in evidence, we reverse the hearing officer's determination that the claimant has not reached MMI and because the claimant has not reached MMI, an IR cannot be assigned. We remand this case to the hearing officer for further action consistent with this decision. No further hearing on remand is necessary.

### **REMAND INSTRUCTIONS**

On remand the hearing officer is to reconsider the evidence in the record after correcting his misstatement of the certification given by Dr. F. The hearing officer is to make a determination of MMI and IR considering the evidence in the record. No additional evidence should be considered on remand.

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 Division, 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **OLD REPUBLIC GENERAL INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge