APPEAL NO. 132258
FILED NOVEMBER 20, 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 (CCH) was held on May 29, 2013, with the record closing on August 19, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on July 6, 2012; (2) the claimant's impairment rating (IR) is zero percent; (3) the compensable injury of [date of injury], does not extend to a herniated disc at L5-S1; and (4) the claimant had good cause for failing to appear at the scheduled CCH on May 29, 2013.

The claimant appeals the hearing officer's MMI, IR, and extent-of-injury determinations, arguing that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be manifestly unjust. The claimant notes that the hearing officer made his extent-of-injury determination based on the opinion of [Dr. L], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) on extent of injury, and that Dr. L stated in her narrative report that she had not received the claimant's medical records at the time of examination. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations. The hearing officer's determination that the claimant had good cause for failing to appear at the scheduled CCH on May 29, 2013, has not been appealed and has become final under Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable lumbar sprain injury on [date of injury], and that [Dr. D] was appointed by the Division as the designated doctor to determine MMI and IR. It is undisputed that Dr. L was subsequently appointed by the Division as the designated doctor to determine extent of injury.

In Finding of Fact No. 6 the hearing officer found that "[t]he determination of [Dr. L], the Division-selected designated doctor, that [the] [c]laimant's compensable injury of [date of injury], does not extend to and include a herniated disc at L5-S1 is not contrary to the preponderance of the evidence," and therefore determined that the compensable injury does not extend to that condition.

Dr. L examined the claimant on February 11, 2013, and in her narrative report dated that same date states:

> No medical records were made available for review. E-mail request for medical records was sent to adjuster on [January 29, 2013] [February 5, 2013] and [February 6, 2013] with no response. E-mail request for medical records was sent to [the claimant's] attorney on [February 9, 2013] and [February 12, 2013] with no response.
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> Regarding [the claimant's] allegation of a large central disc herniation at L5-S1, no medical evidence has been offered by this [claimant] or his attorney to support this as a diagnosis or for including this as part of this injury claim.

The claimant testified at the CCH that his attorney withdrew from the claimant's case prior to the CCH.

Although the hearing officer is correct that Dr. L determined the compensable injury does not extend to a herniated disc at L5-S1, Dr. L makes clear she did so because she had not received the claimant's medical records.

Section 408.0041(c) provides in pertinent part that the treating doctor and the insurance carrier are both responsible for sending to the designated doctor all of the injured employee's medical records relating to the issue to be evaluated by the designated doctor that are in their possession.

28 TEX. ADMIN. CODE § 127.10(a)(1) (Rule 127.10(a)(1)) provides in pertinent part that the treating doctor and insurance carrier shall provide to the designated doctor copies of all the injured employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor. Rule 127.10(a)(3) provides in pertinent part that the treating doctor and the insurance carrier shall ensure that the required records and analyses, if any, are received by the designated doctor no later than three working days prior to the date of the designated doctor examination, and if the designated doctor has not received the medical records or any part thereof at least three working days prior to the examination, the designated doctor shall report this violation to the Division within one working day of not timely receiving the records.

Rule 127.10(b) provides that before examining an injured employee, the designated doctor shall review the injured employee's medical records, including any analysis of the injured employee's medical condition, functional abilities and return to

work opportunities provided by the insurance carrier and treating doctor in accordance with subsection (a) of this section, and any materials submitted to the doctor by the Division. Rule 127.10(b) further provides that the designated doctor shall also review the injured employee's medical condition and history as provided by the injured employee, any medical records provided by the injured employee, and shall perform a complete physical examination of the injured employee. The designated doctor shall give the medical records reviewed the weight the designated doctor determines to be appropriate.

Because Dr. L did not have any of the claimant's medical records before making a determination on extent of injury, the issue Dr. L was appointed to determine, we reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to a herniated disc at L5-S1 and we remand this issue to the hearing officer for further action consistent with this decision.

Because we have reversed the hearing officer's extent-of-injury determination and have remanded that issue to the hearing officer, we also reverse the hearing officer's determination that the claimant reached MMI on July 6, 2012, with a zero percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. L is the designated doctor for extent of injury in this case. On remand, the hearing officer is to determine whether Dr. L is still qualified and available to be the designated doctor on that issue. If Dr. L is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Rule 127.5(c) to determine the extent of injury for the compensable injury of [date of injury], and if necessary, the claimant's MMI and IR.

On remand, the hearing officer should ensure that the treating doctor and the carrier shall send to the designated doctor all of the claimant's medical records that are in their possession relating to the issue to be evaluated by the designated doctor, which is extent of injury, and if necessary, MMI and IR.

The parties are to be provided with the hearing officer's letter to the designated doctor and the designated doctor's response. The parties are to be allowed an opportunity to respond.

Once the hearing officer determines whether the compensable injury of [date of injury], extends to a herniated disc at L5-S1, the hearing officer is then to determine the claimant's date of MMI and IR.

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 **THE CHARTER OAK FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge