APPEAL NO. 132393
FILED DECEMBER 9, 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 September 5, 2013, in [City 1], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], does not extend to the C2-3 central disc protrusion, C3-4 disc protrusion, C4-5 central disc protrusion, C5-6 central disc protrusion, C6-7 central disc protrusion, right neural foraminal narrowing, C7-T1 anterior bridging osteophyte, and C5 and C6 superior endplate fractures; (2) the appellant (claimant) reached maximum medical improvement (MMI) on October 8, 2012; (3) the claimant had no permanent impairment resulting from the compensable injury; and (4) the first certification of MMI and assigned impairment rating (IR) from [Dr. B] on October 8, 2012, became final pursuant to Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12).

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, IR, and finality. The claimant contends that he failed to attend the CCH and respond to the 10-day letter because he did not receive "notices." The claimant argues the designated doctor misinterprets language from the Official Disability Guidelines-Treatment in Workers' Compensation published by Work Loss Data Institute and makes an erroneous assumption regarding the mechanism of the injury. The claimant further argues that the designated doctor failed to rate the entire compensable injury and the preponderance of the evidence is contrary to the opinion of the designated doctor. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Reversed and remanded.

The claimant did not attend the CCH scheduled for September 5, 2013. The hearing officer recited on the record that he would send a 10-day letter to the claimant and he did so admitting the letter as a hearing officer exhibit. The 10-day letter is dated September 5, 2013, and states that the claimant may contact the field office within 10 days of the date of the letter to request that the hearing be reconvened to permit the claimant to present evidence on the disputed issues and to show good cause why he failed to attend the CCH. The letter is addressed to the claimant at [address], [City 2], Texas [zip code]. The appeal file shows the letter was unclaimed after three attempts at delivery. The claimant argues in his appeal that he did not receive notices and lists a different address for his residence and receipt of mail.

In Appeals Panel Decision (APD) 042634, decided November 29, 2004, the Appeals Panel noted that the purpose of the 10-day letter process is to give the non-appearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, a claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel stated that it was not in a position to evaluate the credibility of the claimant in regard to those matters and thus, remanded the case to the hearing officer to take evidence concerning the claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In the instant case, the claimant makes factual allegations that if true, could constitute a basis for the claimant's failure to attend the September 5, 2013, CCH, or respond to the 10-day letter.

Accordingly, we reverse the hearing officer's determinations that: (1) the compensable injury of [date of injury], does not extend to the C2-3 central disc protrusion, C3-4 disc protrusion, C4-5 central disc protrusion, C5-6 central disc protrusion, C6-7 central disc protrusion, right neural foraminal narrowing, C7-T1 anterior bridging osteophyte, and C5 and C6 superior endplate fractures; (2) the claimant reached MMI on October 8, 2012; (3) the claimant had no permanent impairment resulting from the compensable injury; and (4) the first certification of MMI and assigned IR from Dr. B on October 8, 2012, became final pursuant to Section 408.123 and Rule 130.12. We remand the disputed issues to the hearing officer to allow the claimant an opportunity to participate in the dispute resolution process and allow the parties to present evidence on the disputed issues. The hearing officer is then to make a determination on the issues before him consistent with this decision.

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* APD 060721, decided June 12, 2006.

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

RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space Beam
Appeals Judge