

APPEAL NO. 151718
FILED OCTOBER 21, 2015

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 June 10, 2015, in Houston, Texas, with (hearing officer) presiding as hearing officer. Prior to issuing a Decision and Order in this case, (hearing officer) ceased to be a hearing officer with the Texas Department of Insurance, Division of Workers' Compensation (Division) and the case was reassigned to hearing officer (hearing officer), to listen to the CCH recording held on June 10, 2015, review the evidence, and write a decision to resolve the issues in dispute.

The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) had disability beginning on June 3, 2014, and continuing through November 3, 2014; and (2) the claimant had good cause for failing to submit to the designated doctor's examination on June 3, 2014. We note that the issue of good cause for failure to attend the designated doctor's examination included an issue of the period the claimant would not be entitled to temporary income benefits (TIBs) if the claimant did not have good cause for failing to attend that examination.

The appellant (carrier) appealed both of the hearing officer's determinations, contending that the hearing officer erred in making those determinations. The claimant responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

DISABILITY

The hearing officer's determination that the claimant had disability beginning on June 3, 2014, and continuing through November 3, 2014, is supported by sufficient evidence and is affirmed.

**GOOD CAUSE FOR FAILING TO SUBMIT TO THE JUNE 3, 2014,
DESIGNATED DOCTOR EXAMINATION**

It is undisputed by the parties that a designated doctor examination was scheduled for April 29, 2014, with (Dr. F), and that this examination was rescheduled, at the claimant's request, to occur on June 3, 2014. The claimant testified that at that time she was represented by an attorney, (Mr. C), for her workers' compensation claim and a third party action. The claimant testified that when she received the Commissioner Order (Order) notifying her of the June 3, 2014, designated doctor examination, she

called Mr. C about the appointment. The claimant testified that Mr. C asked the claimant to fax him the Order. The claimant also testified that Mr. C told her not to attend the June 3, 2014, designated doctor examination, and that he would have the claimant seen by other doctors regarding her work-related injury. The claimant then testified that she did not attend the June 3, 2014, appointment on the advice of her attorney.

The hearing officer determined that the claimant had good cause for failing to attend the June 3, 2014, designated doctor examination. The hearing officer makes clear in his decision that the claimant's reliance on her attorney's advice not to attend the June 3, 2014, designated doctor examination constituted good cause for failing to attend that examination. However, bad advice received from one's own attorney is not an excuse for the failure to comply with Division requirements. See Appeals Panel Decision (APD) 031799, decided August 18, 2003; APD 022223, decided October 8, 2002; APD 981939, decided September 30, 1998; and APD 951487, decided October 19, 1995. Accordingly, we reverse the hearing officer's determination that the claimant had good cause for failing to submit to the designated doctor's examination on June 3, 2014, and we render a new decision that the claimant did not have good cause for failing to submit to the designated doctor's examination on June 3, 2014.

SUSPENSION OF TIBs

28 TEX. ADMIN. CODE § 127.25(a) (Rule 127.25(a)) provides that an insurance carrier may suspend TIBs if an injured employee, without good cause, fails to attend a designated doctor examination. Because we have rendered a new decision that the claimant did not have good cause for failing to submit to the designated doctor's examination on June 3, 2014, pursuant to Rule 127.25(a) the carrier is entitled to suspend TIBs. We now turn to the issue of what period the claimant is not entitled to TIBs, which was a disputed issue at the CCH.

The claimant testified that she eventually fired Mr. C as her attorney and then hired (Mr. FD) in August of 2014 to represent her in her workers' compensation claim. The claimant testified that Mr. FD immediately sent a Request for Designated Doctor Examination (DWC-32) to the Division and told the claimant that she must attend the next scheduled designated doctor appointment. It was undisputed and the evidence established that a designated doctor examination was set for October 7, 2014, with (Dr. G); however, that examination was rescheduled at the request of Dr. G to occur on October 11, 2014. In evidence is a letter dated October 10, 2014, requesting the Division to redesignate because Dr. G believed the claimant's injury was outside the scope of his practice. It was undisputed and the evidence established that a designated doctor examination was scheduled to occur on November 4, 2014, with (Dr. B), and that

the claimant attended the November 4, 2014, designated doctor examination. Also in evidence is a Report of Medical Evaluation (DWC-69) in which Dr. B certified that the claimant had not reached maximum medical improvement (MMI) but was expected to do so on or about May 4, 2015.

Rule 127.25(e) provides in pertinent part that the insurance carrier shall reinstate TIBs effective as of the date the injured employee submitted to the rescheduled examination unless the report of the designated doctor indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits. Rule 127.25(f) provides in pertinent part that an injured employee is not entitled to TIBs for a period during which the insurance carrier suspended benefits pursuant to Rule 127.25 unless the injured employee later submits to the examination and the Division finds or the insurance carrier determines that the injured employee had good cause for failure to attend the examination.

The claimant argued that if it was determined she did not have good cause for failing to attend the June 3, 2014, designated doctor examination, she should receive TIBs beginning October 7, 2014, the date of the first rescheduled designated doctor examination, because it was not her fault that the designated doctor examination was not scheduled until and ultimately occurred on November 4, 2014. However, Rule 127.25 requires actual attendance of the designated doctor's examination. Additionally, Rule 127.25 does not provide for an exception to the suspension of TIBs based on a delay in the subsequent appointment of a designated doctor examination. See APD 141226, decided August 8, 2014. We note that APD 141226 was decided under a previous version of Rule 127.25; however, the cited legal proposition remains the same under both versions of Rule 127.25.

Therefore, pursuant to Rule 127.25, the carrier is entitled to suspend TIBs beginning June 3, 2014, when the claimant failed, without good cause, to attend the June 3, 2014, designated doctor examination, through November 4, 2014, the date the claimant submitted to the rescheduled designated doctor examination. Accordingly, we render a new decision that the claimant is not entitled to TIBs beginning June 3, 2014, through November 4, 2014.

SUMMARY

We affirm the hearing officer's determination that the claimant had disability beginning on June 3, 2014, and continuing through November 3, 2014.

We reverse the hearing officer's determination that the claimant had good cause for failing to submit to the designated doctor's examination on June 3, 2014, and we

render a new decision that the claimant did not have good cause for failing to submit to the designated doctor's examination on June 3, 2014.

We render a new decision that the claimant is not entitled to TIBs beginning June 3, 2014, through November 4, 2014.

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

**CORPORATION SERVICES CO.
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge