APPEAL NO. 160228

FILED 03/24/2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). An expedited contested case hearing (CCH) was held on December 9, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue of whether (Dr. JL) was properly appointed as designated doctor in accordance with 28 TEX. ADMIN. CODE § 127.1 (Rule 127.1) by determining that the Texas Department of Insurance, Division of Workers' Compensation (Division) properly designated Dr. JL as the designated doctor to perform the extent-of-injury (EOI) examination and select a maximum medical improvement (MMI) date and impairment rating (IR) for an injury consisting of an ACL tear, lateral meniscal tear and medial meniscal tear.

The appellant (self-insured) appeals, arguing that the hearing officer's actions in the case raise, at least, the appearance of impropriety and that his determination violates the mandatory provisions of Division Rules 127.5(d) and 127.130(e). The respondent (claimant) responds, urging affirmance.

DECISION

Reversed and rendered.

It is not disputed that the claimant sustained a compensable injury on (date of injury). A dispute arose concerning EOI, MMI and IR and, for such reason, the Division appointed (Dr. RL) as designated doctor to examine the claimant and prepare a report addressing the disputed issues in the case. Following Dr. RL's examination and report, a CCH in Docket Number FW-14-296060-01-CC-FW49 was held on August 20, 2015, concerning the disputed issues. Subsequently, the hearing officer filed a Presiding Officer Directive causing the appointment of Dr. JL to serve as a second designated doctor to examine the claimant and provide a report addressing EOI, MMI and IR.

Rule 127.5(d) provides in part that if the Division has previously assigned a designated doctor to the claim at the time a request is made, the Division shall use that doctor again unless the Division has authorized or required the doctor to stop providing services on the claim in accordance with Rule 127.130. Rule 127.130(f) provides, in part, that the Division may authorize a designated doctor to stop providing services in a number of scenarios, including, if the doctor has ceased practicing, relocates or has asked the Division to defer his availability on the designated doctor

list. Rule 127.130(g) provides, in part, that the Division will prohibit a designated doctor from providing services on a claim in circumstances such as those where the doctor has failed to become recertified, no longer has appropriate qualification criteria to perform examinations on the claim, has a disqualifying association or has repeatedly failed to respond to Division requests for appointments, clarification or other inquiries regarding the claim. Rule 127.130(h) provides that the Division will prohibit a designated doctor from providing services on a claim if the designated doctor has had his doctor's license revoked or suspended and the suspension has not been probated by an appropriate authority.

An order of an administrative body is presumed to be valid and the burden of producing evidence establishing the invalidity of the administrative action is clearly on the party challenging the action. *Herron v. City of Abilene*, 528 S.W.2d 349 (Tex. Civ. App.-Eastland 1975, writ ref'd). In support of its contention that the Division erred in appointing Dr. JL as designated doctor in the case, the self-insured requested that the hearing officer take official notice of the Dispute Resolution Information System (DRIS) notes in this claim, which request was granted. The DRIS notes in this claim reveal no instances where Dr. RL requested authorization to stop providing designated doctor services, repeatedly failed to respond to Division requests or met any of the other criteria under Rule 127.130(f),(g) or (h) which would constitute an exception to the requirement in Rule 127.5(d) that if the Division has previously assigned a designated doctor to the claim at the time a request is made, the Division shall use that doctor again.

In his decision in this case, the hearing officer stated that he ordered the appointment of a second designated doctor because following the CCH on August 20, 2015, he determined that the preponderance of the evidence was contrary to Dr. RL's determination of EOI and that:

> *Rather than ask the Division to re-appoint Dr. [RL] to do the re-examination, based on the [h]earing [o]fficer's finding on the [EOI], the [h]earing [o]fficer exercised his discretion and requested that a different [designated doctor] be appointed. . . . The [h]earing [o]fficer requested a different [designated doctor] because he was concerned that Dr. [RL] might take umbrage in being instructed that his opinion of extent was rejected. . . .*

Because the hearing officer's reason for ordering the appointment of a new designated doctor is not one of those authorized by Rules 127.5(d) and 127.130, we reverse the hearing officer's decision that the Division properly designated Dr. JL as its designated doctor to perform the EOI examination and determine MMI and IR and

render a new decision that Dr. JL was not properly appointed as designated doctor in accordance with Rule 127.1.

The true corporate name of the insurance carrier is **LOCKHEED MARTIN CORPORATION (a certified self-insured)** and the name and address of its registered agent for service of process is

CSC – THE U.S. CORPORATION COMPANY
400 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge