

APPEAL NO. 182018
FILED NOVEMBER 12, 2018

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 28, 2018, with the record closing on August 2, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the employer or appellant (carrier) properly provided respondent 2 (claimant) with the information required by Insurance Code §§ 1305.005 and 1305.451; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) has jurisdiction to determine the medical fee disputed by (Dr. R) for the date of service of June 9, 2017; and (3) the carrier is liable to pay for the maximum medical improvement (MMI) and impairment rating (IR) evaluation by Dr. R, a non-network doctor, because the claimant was referred to him by the treating doctor for such evaluation.

The carrier appealed the ALJ's determination that it is liable to pay Dr. R for the MMI and IR evaluation at issue. The carrier states the ALJ added the issue on his own motion and that it was improper to do so as this was not a justiciable issue. Respondent 1 (subclaimant) responded, urging affirmance of the ALJ's determination. The appeal file does not contain a response from the claimant.

The ALJ's determinations that the employer or carrier properly provided the claimant with the information required by Insurance Code §§ 1305.005 and 1305.451, and the Division has jurisdiction to determine the medical fee disputed by Dr. R for the date of service of June 9, 2017, have not been appealed and have become final pursuant to Labor Code § 410.169.

DECISION

Reversed and rendered by striking.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that, on that date, the employer provided workers' compensation insurance coverage through the carrier. The evidence reflects that the carrier provided health care to the claimant through a workers' compensation health care network, the Texas Star Network. The evidence also reflects the claimant's treating doctor, (Dr. G), a network doctor, referred the claimant to Dr. R, a non-network doctor who is the subclaimant in this case, for an examination to determine MMI and IR. Dr. R examined the claimant on June 9, 2017, and certified on June 19, 2017, that the claimant reached MMI on May 30, 2017, with a one percent IR.

At the CCH, the ALJ, on his own motion and over objection by the carrier, added the following issue:

Is the [c]arrier liable to pay for the [MMI/IR] evaluation by [Dr. R], a non-network physician, because [the] [c]laimant was referred to him by the treating doctor for such evaluation?

The ALJ writes in the statement of the case portion of the decision that he added the issue “to reflect to [the] correct issue raised by the positions of the parties in this case. . . .” The ALJ held the record open for the parties to have the opportunity to provide briefs on the added issue. After receipt of the parties’ briefs, the ALJ closed the record on August 2, 2018, and later issued a decision and order.

The ALJ concluded that the carrier is liable to pay for the MMI/IR evaluation by Dr. R, a non-network doctor, because the claimant was referred to him by the treating doctor for such evaluation. A dispute over payment for providing an MMI/IR examination is a medical fee dispute which is adjudicated through the Division’s Medical Fee Dispute Resolution program (Chapter 413, Medical Review, of the Labor Code) or the network’s internal complaint resolution process (Chapter 1305, Workers’ Compensation Health Care Networks, of the Insurance Code). Accordingly, we reverse by striking the ALJ’s Conclusion of Law No. 3 and the decision that: “[t]he [c]arrier is liable to pay for the MMI/[IR] evaluation by [Dr. R], a non-network physician, because [the] [c]laimant was referred to him by the treating doctor for such evaluation.”

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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge