APPEAL NO. 221571
FILED NOVEMBER 22, 2022

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 August 4, 2022, with the record closing on August 24, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) (Dr. B) was properly appointed as designated doctor in accordance with 28 Tex. Admin. Code § 127.1 (Rule 127.1) to determine maximum medical improvement (MMI) and impairment rating (IR); and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) had good cause to support the ALJ's request for a designated doctor examination in excess of 75 miles from the appellant's (claimant) residence per Rule 126.6(l). The claimant appealed the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and rendered in part and reversed and remanded in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury in the form of a scalp laceration, head injury direct trauma, osteopenia of distal right leg, grade 1 mild concussion, bilateral occipital neuralgia, right distal fibula fracture, and mild grade 1 cervical sprain/strain. The evidence reflects the claimant was injured on (date of injury), when bunk feeders on a truck shipment fell from a height of about five feet and hit the claimant on his head.

RULE 126.6

Rule 126.6, Required Medical Examination (RME), provides in pertinent part:

> (l) The Division shall require examinations requiring travel of up to 75 miles from the employee's residence, unless the treating doctor certifies that such travel may be harmful to the employee's recovery. Travel over 75 miles may be authorized if good cause exists to support such travel. The carrier shall pay reasonable travel expenses incurred by the employee in submitting to any [RME], as specified in Chapter 134 of this title (relating to Benefits--Guidelines For Medical Service, Charges, and Payments).

The ALJ noted the following in the discussion portion of her decision:

> [I]t is unclear whether Rule 126.6 [RME] applies to [designated doctor] examinations because Rule 126.6(a) refers to requests for medical examinations made by [the carrier] and [the Division]. If Rule 126.6 applies to [designated doctor] examination[s], the [ALJ] notes that Rule 127.5(g) allows [the Division] to choose a qualified [designated doctor] if no other [designated doctor] is available within [the] [c]laimant's county of residence.

The ALJ found that the claimant resides 77 miles away from Dr. B's office, and determined the Division had good cause per Rule 126.6(l) to support the ALJ's request for a designated doctor examination in excess of 75 miles from the claimant's residence. We note that Conclusion of Law No. 4 and the decision incorrectly cites Rule 126.2(l) rather than Rule 126.6(l).

Rule 126.6(i) specifically provides, in part, that examinations with a designated doctor are not subject to any limitations under the provisions for RMEs. Rule 126.6 does not apply to designated doctor examinations and is inapplicable in this case. We reverse the ALJ's determination that the Division had good cause per Rule 126.6(l) to support the ALJ's request for a designated doctor examination in excess of 75 miles from the claimant's residence. We render a new decision that the Division did not exceed its authority by ordering the claimant to attend a designated doctor examination to occur more than 75 miles from the claimant's residence because Rule 126.6 does not apply in this case.

APPOINTMENT OF DR. B

(Dr. A) was the previously appointed designated doctor in this case. The ALJ found that Dr. A is a chiropractor, while Dr. B, the second designated doctor, is a medical doctor. The claimant contends on appeal that Dr. A is in fact a medical doctor, not a chiropractor. The carrier agrees in its response. The medical records establish that Dr. A is a medical doctor, not a chiropractor. The ALJ's statement that Dr. A is a chiropractor is a misstatement of the evidence. While the ALJ can accept or reject in whole or in part the evidence presented, the ALJ's decision in this case is based, in part, on a misstatement of the evidence in the record. Accordingly, we reverse the ALJ's determination that Dr. B was properly appointed to serve as the designated doctor on the issues of MMI and IR in accordance with Rule 127.1, and we remand this issue to the ALJ for further action consistent with this decision. We note Rule 127.130(b)(9)(A) provides in pertinent part that in order to examine traumatic brain injuries, including a concussion, a designated doctor "must be board certified in neurological surgery, neurology, physical medicine and rehabilitation, or psychiatry by the [American Board of Medical Specialties] or board certified in neurological surgery,

neurology, physical medicine and rehabilitation, or psychiatry by the [American Osteopathic Association Bureau of Osteopathic Specialists]."

Additionally, the claimant contended at the CCH and on appeal that Dr. B is not qualified to serve as the designated doctor because he has a disqualifying association. Specifically, the claimant argued that Dr. B is disqualified under Rule 127.140(a) because Dr. B is one of the medical directors of (entity), which is located at the same address where the claimant was ordered to attend an RME examination with (Dr. M). We note the claimant testified he did not believe he had attended any examination with Dr. M.

The ALJ did not discuss or make any findings of fact, conclusions of law, or a decision whether Dr. B has a disqualifying association under Rule 127.140(a), an issue which was actually litigated by the parties at the CCH. The ALJ erred in failing to add this issue, and in failing to make findings of fact, conclusions of law, and a decision as to whether Dr. B has a disqualifying association under Rule 127.140(a). We therefore reverse the ALJ's decision as being incomplete, and we remand the issue of whether Dr. B has a disqualifying association under Rule 127.140(a) to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the Division had good cause per Rule 126.6(l) to support the ALJ's request for a designated doctor examination in excess of 75 miles from the claimant's residence. We render a new decision that the Division did not exceed its authority by ordering the claimant to attend a designated doctor examination to occur more than 75 miles from the claimant's residence because Rule 126.6 does not apply in this case.

We reverse the ALJ's determination that Dr. B was properly appointed to serve as the designated doctor on the issues of MMI and IR in accordance with Rule 127.1, and we remand this issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's decision as being incomplete, and we remand the issue of whether Dr. B has a disqualifying association under Rule 127.140(a) to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct the misstatement regarding Dr. A. The ALJ is also to add the issue of whether Dr. B has a disqualifying association under Rule 127.140(a), and make findings of fact, conclusions of law, and a decision on that issue,

considering all the evidence. The ALJ is also to make findings of fact, conclusions of law, and a decision on whether Dr. B was properly appointed to serve as the designated doctor in accordance with Rule 127.1, considering all the evidence.

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 ALJ, 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 **ACCIDENT FUND GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge