

APPEAL NO. 230546
FILED JUNE 1, 2023

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 March 6, 2023, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that: (1) regarding extent of injury, (Dr. C) was properly appointed as designated doctor in accordance with Section 408.0041 and Texas Department of Insurance, Division of Workers' Compensation (Division) rules; and (2) regarding maximum medical improvement (MMI) and impairment rating (IR), Dr. C was not properly appointed as designated doctor in accordance with Section 408.0041 and Division rules. The appellant (claimant) appealed, disputing the ALJ's determination that Dr. C was not properly appointed to determine MMI and IR in accordance with Section 408.0041 and Division rules. The respondent (self-insured) responded, urging affirmance of that determination. The ALJ's determination that Dr. C was properly appointed to determine extent of injury was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The evidence established that the claimant sustained a compensable injury on (date of injury). On September 9, 2022, the self-insured filed a Request for Designated Doctor Examination (DWC-32) on the issues of MMI and IR. The self-insured's DWC-32 noted in Box 37 the claimant's injuries as ribs 3-4 and 5-8 fractures, a left shoulder contusion, and a lumbar strain. The self-insured's request was granted, and Dr. C was appointed to address MMI and IR. Dr. C examined the claimant on October 26, 2022, and opined the claimant reached MMI on January 18, 2022, with a five percent IR considering the injuries specified by the self-insured.

On December 10, 2022, the claimant's attorney filed a DWC-32 requesting a designated doctor on the issues of extent of injury, MMI, and IR. The claimant's DWC-32 noted the injuries considered compensable by the self-insured, and listed several extent-of-injury conditions to be addressed by the designated doctor, including disc bulges and facet arthrosis and mild neural foraminal narrowing at L3-4 and L5-S1, among other conditions. In Box 39 of the DWC-32, which requests an explanation of good cause to schedule an examination within 60 days of a previous designated doctor examination, the claimant's attorney stated that the self-insured "filed MMI/IR on its 'compensable issues only,' then disputed 'extent of injury' without having the [designated doctor] also address the same in conjunction with the MMI/IR. Consequently, request for MMI/IR and extent of injury together."

The Division approved the claimant's DWC-32, and a Division order was sent on February 6, 2023, appointing Dr. C on the issues of MMI, IR, and extent of injury. This exam was set for February 22, 2023; however, the self-insured filed a stay of examination and expedited CCH on the issue of whether Dr. C was properly appointed for this examination.

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). The Division's appointment of Dr. C for the February 22, 2023, examination is presumed to be valid, and the self-insured had the burden of proof to establish that the Division's appointment of Dr. C was invalid.

The ALJ noted in the discussion portion of the decision that the self-insured argued Dr. C should not have been reappointed because it did not receive a copy of the DWC-32 from the claimant and because Dr. C has already certified the claimant at MMI and assigned an IR. The ALJ's discussion established he found the claimant's argument the DWC-32 was sent to the self-insured by U.S. mail as indicated on the cover sheet of the DWC-32 was persuasive. However, the ALJ also noted "[t]he persuasive evidence established, regarding [MMI] and [IR], that the [Division] did not properly appoint [Dr. C] based upon the [DWC-32] that was filed on December 10, 2022, by the claimant." The ALJ provided no rationale as to why the evidence was persuasive to establish Dr. C was not properly appointed to address MMI and IR.

Section 408.0041(b) provides, in part, that a designated doctor examination may not be conducted more frequently than every 60 days, unless good cause for more frequent examinations exists. In Appeals Panel Decision 160697-s, decided May 25, 2016, the Appeals Panel held that in determining whether a requested designated doctor examination occurs within 60 days of a previous designated doctor examination the controlling date is the date of the actual subsequent examination, not the date the request is made.

Dr. C's initial MMI/IR examination occurred on October 26, 2022. The claimant filed a DWC-32 requesting a designated doctor examination for the issues of extent of injury, MMI, and IR on December 10, 2022, within 60 days of Dr. C's examination, which was approved by the Division. However, the subsequent examination was set to occur on February 22, 2023, which is more than 60 days from Dr. C's initial examination. Because the evidence established the second designated doctor examination was not within 60 days of the first designated doctor examination, the claimant was not required to show good cause for scheduling the second designated doctor examination.

The self-insured presented no evidence or authority to show the Division did not follow Section 408.0041 and Division rules in appointing Dr. C to serve as designated doctor to address MMI and IR for the February 22, 2023, examination. The self-insured did not show the Division abused its discretion in appointing Dr. C to address MMI and IR as requested by the claimant. Therefore, we reverse the ALJ's determination that Dr. C was not properly appointed to serve as designated doctor to address MMI and IR in accordance with Section 408.0041 and Division rules. We render a new decision that Dr. C was properly appointed to serve as designated doctor to address MMI and IR in accordance with Section 408.0041 and Division rules.

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

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge