



Texas Department of Insurance

Division of Workers' Compensation

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REQUESTS FOR A LETTER OF CLARIFICATION OF THE DESIGNATED DOCTOR'S REPORT

SAMPLES OF APPROVALS/DENIALS OF REQUESTS FOR A LETTER OF CLARIFICATION OF A DESIGNATED DOCTOR'S REPORT

Based on the Texas Department of Insurance, Division of Workers' Compensation's (TDI-DWC) monitoring of requests for a Letter of Clarification of a designated doctor's report, the following are some examples of the TDI-DWC's responses to requests for a Letter of Clarification based on the specific facts of the particular case.

EACH REQUEST FOR CLARIFICATION WAS EVALUATED ON A CASE-BY-CASE BASIS. THE FOLLOWING REVIEW CONSIDERATIONS ARE INTENDED FOR GUIDANCE ONLY AND MAY OR MAY NOT RESULT IN A PRESIDING OFFICER DETERMINING THE NECESSITY FOR SEEKING CLARIFICATION FROM THE DESIGNATED DOCTOR GIVEN THE SPECIFIC FACTS OF EACH INDIVIDUAL REQUEST.

Approvals:

Statutory MMI

The designated doctor was asked to assess Maximum Medical Improvement (MMI) and Impairment (IR). However, instead of assessing MMI in accordance with the statutory MMI date, the doctor assigned a date after the statutory MMI date. In this case, it was found to be appropriate to request the designated doctor to readdress MMI/IR in accordance with the statutory date of MMI.

Incomplete Designated Doctor's Report

- The designated doctor did not issue an impairment rating that covered all aspects of the compensable injury – the designated doctor rated the injured employee's right upper extremity, but did not include the injured employee's neck injury which was also part of the compensable injury.
- The designated doctor did not address all issues for which he was appointed or addressed issues that were not part of the original examination order:
 - the designated doctor certified MMI/IR, but failed to opine on whether the injured employee's disability was a direct result of the compensable injury, or
 - the designated doctor was only asked to address MMI and provided a certification for IR also.

- The designated doctor did not provide multiple certifications of MMI/IR for an extent of injury dispute – if the designated doctor was aware of an extent of injury dispute at the time of the examination, multiple certifications should have been provided to take into account the various interpretations of the injuries in dispute [see 28 Texas Administrative Code (TAC) §130.6(b)(5)].
- The designated doctor did not provide an explanation for why the prior determination of MMI was not used – when the only dispute was over a treating doctor’s assessment of MMI and the designated doctor found that the employee either was not at MMI or reached MMI on a date later than the treating doctor’s certification. The designated doctor should have provided an explanation with clinical documentation to support why the employee did not reach MMI on the date certified by the treating doctor [see 28 TAC §130.6(b)(2)].
- The designated doctor did not provide a clear diagnosis in response to an extent of injury question.
- The designated doctor did not provide an explanation for not performing a re-examination for range of motion testing to meet consistency requirements in the *American Medical Association Guides to the Evaluation of Permanent Impairment* [see 28 TAC §130.6(c)].

Denials:

- A question seeking reconsideration of the designated doctor’s opinion based on a difference of medical opinion between the designated doctor and another doctor. This was determined to be a request for reconsideration, not clarification.
- The requestor asked to have the designated doctor address whether the compensable injury included major depressive disorder and other conditions; however, the designated doctor had clearly reported the compensable injury did not include those conditions.

Designated Doctor Examinations Rather than Approval of a Request for a Letter of Clarification:

To resolve an issue regarding a designated doctor’s report, TDI-DWC has determined, in some cases, that ordered examinations were more appropriate than a letter of clarification. Examples included:

- situations where the original designated doctor was no longer on the Designated Doctor List or is deferred, and the question raised was necessary to the resolution of the issues for which the original designated doctor was appointed;
- situations where an injured employee had surgery for a compensable body part or condition after a designated doctor exam; or

- situations where a change in scope of the compensable injury has occurred after a designated doctor exam by:
 - an agreement of the parties (DWC Form-024, *Benefit Dispute Agreement*); or
 - a Benefit Contested Case Hearing Decision and Order.

In these situations, a request for a Letter of Clarification has been denied and the TDI-DWC has issued an order informing the parties of the circumstances requiring the examination and ordered the appropriate party to complete a new DWC Form-032, *Request for Designated Doctor Examination*.

The TDI-DWC processed and approved those DWC Form-032 requests when the party completing the request had otherwise complied with the requirements of the Workers' Compensation Act and TDI-DWC Rules in completing the request.