

APPEAL NO. 022770
FILED DECEMBER 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 17, 2002. With respect to the issues before her, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on May 9, 2002, with an impairment rating (IR) of 0%, as certified by the designated doctor. The claimant appealed the decision and argued that because the claimant sustained a compensable injury in the form of reactive airway dysfunction syndrome (RADS) on _____, that the designated doctor should have been a pulmonology specialist and thus that the hearing officer should have appointed another designated doctor. There was no response from the respondent (carrier).

DECISION

Reversed and remanded.

According to our previous opinion in Texas Workers' Compensation Commission Appeal No. 992934, decided February 11, 2000, and the language in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(d)(2)(C) (Rule 130.5(d)(2)(C)), the hearing officer erred in determining that the claimant reached MMI on May 9, 2002, with a 0% IR, pursuant to the report of the designated doctor.

The claimant sustained a compensable injury on _____, when he inhaled some kind of toxic and/or hazardous substance that caused him to develop RADS, sometimes described as asthma. The claimant's treating doctor, a pulmonologist, did not believe the claimant had reached MMI because he was not receiving all of the requested prescriptions and continued to be plagued with respiratory problems, some causing hospitalization. The designated doctor, whose letterhead identifies her as a specialist in "physical medicine and rehabilitation," believed that since the claimant had no real respiratory distress on the day of the examination, he had reached MMI and had a 0% IR. The treating doctor's notes indicate that the claimant's symptoms are intermittent and of varying frequency and intensity.

In his prayer for relief, the claimant asks that the Texas Workers' Compensation Commission (Commission) appoint a designated doctor who is familiar with pulmonary disease. In support of his argument, the claimant sites Appeal No. 992934, *supra*. In Appeal No. 992934, the Appeals Panel affirmed the hearing officer's decision to accept the MMI and IR of the treating doctor over the designated doctor, because the treating doctor specialized in lung disorders and the designated doctor did not, in keeping with the specific language in the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical

Association, then in effect.¹ That language is almost identical to the parallel language on page 164 of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), applicable here, which reads

Table 10 . . . highlights some other conditions in which impairment is not readily quantifiable and provides some general comments. Impairments in persons with these conditions **should be evaluated by physicians with expertise in lung disease**, and the impairment estimate should be left to the physician's judgment. (Emphasis added).

In Appeal No. 992934, the Appeals Panel wrote that “. . . in future cases where an IR under Table 9 [now Table 10] is at issue, it would seem that the Commission should appoint a designated doctor with expertise in lung disease.” The claimant makes the argument that the designated doctor should have rated him under Table 10 of the Fourth Edition of the AMA Guides, thus calling for a pulmonary specialist.

In addition, while the claimant does not specifically refer to it, now applicable is Rule 130.5(d)(2)(C), which reads, in pertinent part, that the designated doctor appointed

. . . has credentials appropriate to the issue in question, is trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and whose scope of practice includes the treatment and procedures performed. . .

Therefore, the hearing officer in this case should have followed precedent and Rule 130.5(d)(2)(C), and appointed a second designated doctor who specializes in lung disorders.

The hearing officer's determinations are hereby reversed and the case is remanded for the appointment of a designated doctor who specializes in lung disorders, to evaluate the claimant and certify whether he has reached MMI and if so, determine his IR under the appropriate section of the Fourth Edition of the AMA Guides.

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 hearing officer, 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 Commission's Division of Hearings, 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

¹ It is important to note that in that case, the parties did not seek the appointment of a different designated doctor, which the panel appeared to believe to be the proper remedy. The hearing officer there granted the relief requested by the claimant.

the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge