CLIENT NEWSLETTER

RDG THE LAW OFFICE OF RICKY D. GREEN, PLLC

January 13, 2012

Hello Subscriber,

Our law firm likes to keep tabs on new appeals panel decisions that impact claims handling. There are a couple of new cases we want to discuss with you.

The first case is DWC Appeal No. 111244, decided October 3, 2011. In that case, the appeals panel reversed the hearing officer's decision that the claimant reached MMI on November 9, 2010 with a 5% IR, and rendered a decision that the claimant had not reached MMI per the opinion on the claimant's treating doctor. In this case, the claimant alleged a cervical and lumbar injury. The carrier did not file a PLN-11 disputing the lumbar spine. The claimant's attorney argued that the designated doctor's report could not be adopted because the DD did not have all of the claimant's records and did not rate the entire compensable injury. The designated doctor provided in his report that the claimant reached MMI on November 9, 2010 with a 5% IR for DRE Category II for Cervicothoracic. There was no mention in the DD's report that he rated the lumbar spine. He did not even provide a 0% rating for the lumbar spine. There was evidence that the claimant had a MRI of the lumbar spine that showed protrusion/herniation at L3-4, L4-5 and L5-S1 which indented the thecal sac, had an EMG that was suggestive of bilateral L5 and bilateral S1 radiculopathy. The claimant also had physical therapy to the cervical and lumbar spine and had lumbar epidural steroid injections. The appeals panel found designated doctor did not rate the entire compensable injury, and so adopted the treating doctor's finding that the claimant did not reach MMI.

TIPS – please define the compensable injury by filing a PLN-11 stating what you have accepted on the claim and any diagnoses you are specifically denying. You can also accept a specific diagnosis and deny any and all other injuries/body parts as not part of the compensable injury. The DD is supposed to provide an impairment rating for the accepted compensable injury. If you believe the designated doctor has not rated the entire compensable injury or has rated non-compensable body parts, the carrier can request a letter of clarification be sent to the designated doctor and/or can request a post-DD RME on MMI/IR.

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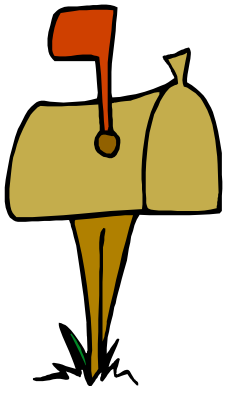
The second case is DWC Appeal No. 111191, decided October 7, 2011. In that case, the appeals panel considered in part whether the employer made a bona fide offer of employment to the injured employee. The hearing officer found that the employer made a bona fide offer of employment to the injured employee, and further found, "the claimant accepted the employer's July 21, 2010, written offer of modified duty employment, but when she reported to work, the actual duties required by the modified duty of employment did not comply with the written offer or the claimant's restrictions as set forth on the Work Status Report (DWC-73) that formed the basis of the modified duty offer of employment. The hearing officer was persuaded that the actual duties assigned to the claimant exceeded the restrictions of the DWC-73 that formed the basis of the modified duty offer of employment." The appeals panel concluded, "Therefore, the hearing officer erred when he determined that the employer made a BFOE to the claimant, but effectively rescinded that offer. Because the duties assigned to the claimant exceeded the restrictions of the DWC-73 the self-insured did not make a BFOE. *See* APD 030292, decided March 20, 2003. Accordingly, we reverse the hearing officer's determination that the employer made a BFOE to the claimant, but effectively rescinded that offer on the day it was made and that the self-insured is not entitled to adjust the post-injury weekly earnings and render a new decision that the employer did not make a BFOE."

TIPS–the claim's adjuster should review the DWC-73 work status report with the employer to be sure that the employer complies with the work restrictions listed on the work status report. The adjuster should also want to review the bona fide offer letter to be sure it complies with DWC Rule 129.6 requirements. Our law firm would be happy to share a sample BFOE employment letter that complies with the DWC Rule 129.6 requirements. Our office can also review any BFOE letters before they are sent to a claimant.

If you have any questions regarding any of these two appeals panel decisions or any other appeal panel decision, Texas Labor Code provision or DWC rule, please feel free to contact our law office to discuss in detail. We look forward to providing legal guidance to your insurance company, self-insured or third party administrator.



QUESTIONS? COMMENTS? Have questions or comments about any of the stories in the newsletter or general questions about a workers' compensation matter? Drop us a line at questions@rickydgreen.com, or give us a call at (512) 280-0055. We look forward to handling all of your workers' compensation needs.

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