CLIENT NEWSLETTER

THE LAW OFFICE OF RICKY D. GREEN, PLLC

April 30, 2012

Dear Reader:

Our law firm likes to keep our readers informed of important appeals panel decisions on various workers compensation topics. As you know, there have been several 90-day finality hearings since the carrier or claimant has the obligation to dispute the first certification of maximum medical improvement/impairment rating within 90 days of verifiable receipt by either requesting a benefit review conference or requesting a designated doctor, if a designated doctor has not already been appointed. In the past, a carrier or claimant could stop the 90-day clock by filling out a DWC-45 BRC Request and write something such as "we do not want a BRC, but we're filing this request for a BRC to stop the 90-day clock." The appeals panel has written several decisions that provide that a carrier or claimant cannot stop the 90-day clock by writing "we do not want a BRC" on the DWC-45 BRC Request Form; the appeals panel stated that if the parties request a BRC, the parties must be ready to go forward to a BRC. Here are some other appeals panel decisions that give us clarification on 90-day finality cases.

Appeals Panel Decision (APD) 091106 – Decided September 17, 2009

The appeals panel reversed the hearing officer's decision that the claimant did not receive the first certification of MMI/IR by verifiable means and rendered that the first certification became final under the 90-day rule. The carrier did not send the DWC-69 and narrative by certified mail, return receipt requested. But, the carrier sent the DWC-69 and narrative by United States Postal Service (USPS) "Track and Confirm" form listing a certified mail number showing delivery to the claimant's city and zip code. The adjuster's notes showed that a certified letter was sent with the DWC-69 and PLN-3 by way of "Track and Confirm". The certified or regular mail was not returned as undeliverable. The appeals panel found that this was adequate to confirm delivery and that the first certification became final after 90 days.

TIPS – Please send DWC-69s, narrative reports, and PLN-3s by verifiable means and describe what was sent. Verifiable means can include acknowledged receipt, a statement of personal delivery, confirmed delivery by e-mail, or confirmed delivery by fax. If you send them by certified mail, please make a request for return receipt where the claimant can sign the green card acknowledging the date of receipt that is returned back to the adjuster. When sending a report by certified mail, write on the green card what is included in the envelope. If a claimant does not pick up their certified mail, you can try a different form of delivery such as courier service.

Continued…

THE LAW OFFICE OF
RICKY D. GREEN, PLLC

9600 ESCARPMENT BLVD.,
SUITE 745-52
AUSTIN, TEXAS 78749

PHONE
(512) 280-0055
(866) 853-9407

FAX
(512) 280-0071

RICKY@RICKYDGREEN.COM
QUESTIONS@RICKYDGREEN.COM
WWW.RICKYDGREEN.COM

Licensed in Texas and Oklahoma

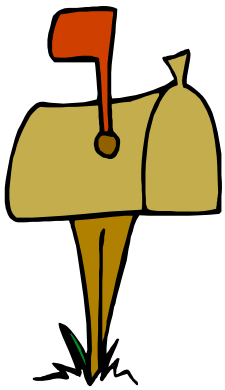
Certified as a Minority Business Enterprise

APD 042749 – Decided December 21, 2004

The appeals panel reversed the hearing officer's decision that the claimant received the first certification of MMI and IR by verifiable means and rendered the claimant did not receive it by verifiable means. The first certification of MMI and IR was assigned on January 27, 2004 and was not disputed until May 19, 2004. The claimant provided conflicting testimony as to when she received the report in the mail. The carrier provided no evidence as to the date the report was actually received by the claimant. Based on claimant's testimony, the hearing officer found that she received the report no later than February 14, 2004. The question in front of the appeals panel was whether the claimant's inconsistent and contradictory testimony was "acknowledged receipt by the injury employee." The appeals panel wrote, "Fairly clearly the claimant acknowledged receipt of the report but equally clearly she did not know when she received it and was only speculating when the date was, nor does the carrier have "verifiable proof that [the first certification of MMI and IR] was delivered." We hold that the claimant's testimony in this case, does not amount to an acknowledged receipt by the claimant on a date certain sufficient to begin the 90-day period of Section 408.123(d) and Rule 130.12."

APD 111227 – Decided October 13, 2011

In this case, the claimant successfully appealed a CCH decision that the first certification of MMI/IR became final under the 90-day rule by arguing that one of the exceptions to 90 day finality applied. Texas Labor Code Section 408.123 provides that a first certification of MMI/IR can be disputed after 90 days if there is compelling medical evidence of a significant error in applying the AMA Guides or calculating the IR, a clearly mistaken diagnosis or a previously undiagnosed medical condition, or improper or inadequate treatment of the injury before the certification. The claimant argued that he met an exception because the certifying doctor did not rate the accepted thoracic spine injury. In his report, the doctor did not rate the thoracic spine, did not mention a thoracic spine injury, and did not give a diagnosis for the thoracic spine. The appeals panel reversed the finding of finality and wrote, "the failure to rate the entire compensable injury constitutes compelling medical evidence of a significant error by the certifying doctor in applying the appropriate AMA Guides or in calculating the IR." The appeal panel rendered that the first certification of MMI/IR did not become final because of an exception to the 90-day rule.



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.

SUBSCRIBE: If there are others in your organization who would like to receive our newsletters, please let us know by replying to this email, or sending a blank email to newsletter@rickydgreen.com, with "Subscribe" as the subject.

UNSUBSCRIBE: If you no longer wish to receive our newsletters, please let us know by replying to this email, or sending a blank email to newsletter@rickydgreen.com, with "Unsubscribe" as the subject.

THE LAW OFFICE OF RICKY D. GREEN, PLLC
9600 Escarpment Blvd., Suite 745-52
Austin, Texas 78749
P: (512) 280-0055 F: (512) 280-0071
ricky@rickydgreen.com
www.rickydgreen.com