



# CLIENT NEWSLETTER



THE LAW OFFICE OF RICKY D. GREEN, PLLC

April 15, 2013

## **DWC HOLDS MEETING REGARDING**

### **DWC RULE 130.1**

The Division of Workers' Compensation held a public hearing this past Friday, April 12, 2013 at 1:30 PM on an amendment to DWC Rule 130.1. The amendment provides that an impairment rating is not valid if it is based on a date that is not the maximum medical improvement date. The amendment also provides that the impairment rating must match up with the MMI date and be included on the DWC-69 - Report of Medical Evaluation. The Division does not want the parties to piece-meal an impairment rating from one report and match it with a MMI date from another report. The IR and MMI date must correspond with each other.

This amendment is due to the Texarkana Court of Appeals decision in *State Office of Risk Management v. Joiner* that was decided on January 12, 2012. Rod Bordelon, the Workers' Compensation Commissioner, stated at the public hearing this past Friday that the new amendment is not intended to influence the Texas Supreme Court if/when it considers the Texarkana's Court of Appeals decision in the *Joiner* case.

In the *Joiner* case, Elaine Banks Joiner, the claimant, slipped and fell while working for the Texas Department of Health and Human Services. She had right shoulder distal clavicle resection arthroplasty and a right knee partial lateral meniscectomy. The treating doctor examined the claimant on July 17, 2006 and wrote a narrative report that placed her at MMI on July 5, 2006 with a 34% impairment rating. The treating doctor issued a DWC-69 at a later date and wrote that the claimant reached clinical MMI on July 17, 2006 with a 34% IR (this clinical MMI date on the DWC-69 is different than the MMI date in the narrative report). The Division appointed a designated doctor who placed the claimant at MMI on July 3, 2006 with a 7% IR.

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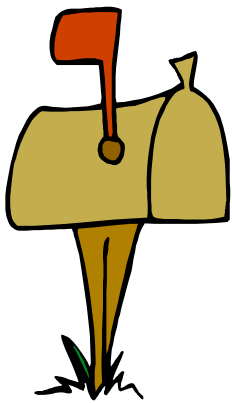
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The Division sent two letters of clarification to the designated doctor and told him that statutory MMI is July 10, 2006. The DD responded to the letters of clarification by maintaining his 7% IR for the claimant with a statutory MMI date of July 10, 2006.



The case went to a CCH on the issue of impairment rating, and the hearing officer found that the claimant's impairment rating was 34%, based on the opinion of the treating doctor. SORM appealed the CCH Decision and Order, and the appeals panel reversed the hearing officer's decision and found that the claimant's IR was 7%. The claimant filed for judicial review, and the jury found that the claimant's IR was 34%. SORM appealed the jury's judgment to the Texarkana Court of Appeals.

The Court of Appeals (CofA) stated that the parties stipulated to a statutory MMI date of July 10, 2006, so the treating doctor's certification of MMI of July 5, 2006 "technically fails to comply" with the requirement that the 34% IR match up with the stipulated MMI date (the treating doctor placed the claimant at MMI on July 5, 2006 with a 34% IR, so the 34% IR does not match with the stipulated MMI date of July 10, 2006). The CofA stated that there's no evidence that the claimant's condition changed at any time in July 2006, so the 34% IR is valid although it doesn't correspond with the stipulated MMI date. "We cannot read into the rule a consequence of noncompliance - the complete omission of (the treating doctor's) report - which is not included in the rule and which would not effectuate the intent of the rule in this case."



**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](mailto: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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