

Opinion Issued November 1, 2007



In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00558-CV

IN RE ESTHER WARD, Relator

Original Proceeding on Petition for Writ of Mandamus

OPINION

Relator, Esther Ward, filed a petition for writ of mandamus complaining of the trial court's¹ June 25, 2007 order compelling relator to present herself for a medical examination that relator contends is void for lack of jurisdiction.

¹ The underlying case is *Am. Home Assurance Co. v. Esther Ward*, No. C-2007-79737, in the 270th District Court of Harris County, Texas, the Honorable Brent Gamble, presiding.

Relator claimed a job-related injury and filed for workers' compensation with the Texas Department of Insurance, Workers' Compensation Division ("the Division"). Relator's claim proceeded through the administrative levels until, ultimately, American Home Assurance Company ("the carrier") sought judicial review of the division's award of benefits to relator as provided for in the Texas Labor Code. TEX. LAB. CODE ANN. § 410.251 (Vernon 2006).

Upon the carrier's motion, the trial court directed relator to appear for an independent medical examination pursuant to Texas Rule of Civil Procedure 204.² TEX. R. CIV. P. 204. Relator then sought this writ of mandamus, asserting that the trial court's order is void for want of jurisdiction.³

Relator asserts in her petition for writ of mandamus that this order constitutes a "required medical examination" under the Texas Labor Code and that the Division retains exclusive jurisdiction over medical examinations. Relator asserts that section 408.004 of the Labor Code requires an insurance carrier to seek an order for a medical examination from the Division. TEX. LAB. CODE ANN. § 408.004. However, although chapter 408 of the Texas Labor Code concerns workers' compensation

² Relator had been previously directed to attend a "required medical examination" by the division and complied.

³ Courts have held that it is appropriate to challenge an order under former Texas Rule of Civil Procedure 167a, the predecessor to Rule 204, through a petition for writ of mandamus. *See Williams v. Sanderson*, 904 S.W.2d 212, 214 (Tex. App.—Beaumont 1995, orig. proceeding).

benefits, chapter 410 addresses **adjudication of disputes** regarding workers' compensation benefits. Once judicial-review proceedings began regarding compensability, sections 410.301 to 410.308 became pertinent. *Id.* §§ 410.301–410.308.

Section 410.302(a) provides that “the records of a contested case hearing conducted under this chapter are admissible in a trial under this subchapter in accordance with the Texas Rules of Evidence.” *Id.* § 410.302(a). Section 410.306 provides that “evidence shall be adduced as in other civil trials” and “all facts and evidence the [Division’s] record contains are admissible to the extent allowed under the Texas Rules of Evidence.” *Id.* § 410.306. Section 410.306(c) establishes a limitation:

Except as provided by Section 410.307, evidence of extent of impairment shall be limited to that presented to the division. The court or jury, in its determination of the extent of impairment, shall adopt one of the impairment ratings under Subchapter G, Chapter 408.

Id. Because only evidence of extent of impairment is limited to that presented to the Division, the implication is that new evidence of other relevant issues, such as causation, is admissible. In fact, when an appeals panel decision is appealed to the trial court, the trial court reviews it under a modified *de novo* standard. *State Office of Risk Mgmt. v. Escalante*, 162 S.W.3d 619, 626 (Tex. App.—El Paso 2005, pet. dismiss’d) (citing *Texas Workers’ Comp. Comm’n v. Garcia*, 893 S.W.2d 504, 530 (Tex.

1995); *Peterson v. Continental Cas. Co.*, 997 S.W.2d 893, 895 (Tex. App.—Houston [1st Dist.] 1999, no pet.)). The proceeding is reviewed *de novo* because new evidence (other than that presented to the hearing officer) is admissible at trial. *Id.*

Because the trial court retained jurisdiction over the issue of compensability, it had the authority to issue an order under Rule 204 if the requirements for obtaining the order were met.⁴ Thus, we **deny** the petition for writ of mandamus and **vacate** our July 3, 2007 order staying the complained-of order of the trial court.

PER CURIAM

Panel consists of Justices Taft, Hanks, and Higley.

⁴ The petition does not seek to have this Court address whether those requirements were met, but attacks only the trial court's jurisdiction to issue the order.