APPEAL NO. 931190

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On November 18, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent (claimant) reached maximum medical improvement (MMI) on June 7, 1993, with seven percent impairment. Appellant (carrier) asserts that the designated doctor applied the wrong standard for determining MMI when he stated that MMI was reached the day he examined claimant. Claimant replies that the hearing officer should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on (date of injury), the date of injury. Claimant stated that he fell from one scaffold a few feet to another, injuring his knee and back. There was some evidence that claimant worked in a tool room and not on scaffolding; in addition there was some evidence that on the day in question, it rained, and no work was done by anyone on scaffolding.

The carrier accepted liability and began paying benefits on February 13, 1992. Employer contested liability. The hearing officer found that the employer knew or could have reasonably discovered the facts of the accident on April 13, 1992. The employer was then found to have first communicated its dispute of compensability to claimant and the Texas Workers' Compensation Commission (Commission) on September 22, 1993, at the benefit review conference. The hearing officer found that the delay in informing the Commission and contesting compensability was unreasonable and therefore untimely. There was no appeal to this portion of the decision or to the findings and conclusions that support it.

An examination by (Dr. DY) of claimant in August 1992 found that MMI was reached on August 18, 1992, with five percent impairment. Claimant then asked for a designated doctor and (Dr. P) was appointed by the Commission. He saw claimant on June 7, 1993, and found that MMI had been reached on June 7, 1993. Claimant's treating doctor, (Dr. G) stated that claimant reached MMI on July 20, 1993, with seven percent impairment. The parties agreed at the benefit review conference that the impairment rating was seven percent.

Pointing out that Dr. DY found MMI in August 1992, the carrier asks that the case be remanded so that the designated doctor may determine MMI based on the evidence. According to a letter from Dr. P to carrier, dated September 28, 1993, Dr. P referred to the carrier's inquiry to him dated September 17, 1993, but would not change the date of MMI he had given of June 7, 1993. After stating that claimant may have reached MMI earlier, Dr. P stated, "[s]ince I have no way to determine the accuracy of that, using the date when I actually saw the patient, again, has become the custom." Dr. P also referred to "Appeal

Number 91648 [found to be 92648] and 93448." We note that Texas Workers' Compensation Commission Appeal No. 92648, decided January 21, 1993, referred to doctors usually assessing MMI on the date the claimant was seen because they had personal knowledge of that date; the opinion pointed out that the doctor can select an earlier date, but the opinion said it was "most important" that the date reflect professional judgment based on the examination conducted and a review of the medical evidence. Texas Workers' Compensation Commission Appeal No. 93448, decided July 21, 1993, primarily addressed changes in a designated doctor's opinion. In that decision the designated doctor chose an earlier date of MMI given by another doctor who had seen the claimant previously.

Neither the letter of Dr. P, nor the cited opinions, indicate that Dr. P applied the wrong criteria to determine the date of MMI. If, in his medical judgment, MMI occurred at a date earlier than his ezamination, he could have so found. He chose the date he saw the claimant because he did not want to pick an "arbitrary date prior to my personally having assessed the patient." Such a basis is within the standard set forth by Appeal No. 92648, *supra*, and does not indicate an erroneous assumption as to the law. The great weight of other medical evidence was not contrary to the opinion of the designated doctor.

Finding that the decision and order of the hearing officer that MMI was reached on June 7, 1993, with seven percent impairment and that the carrier should pay benefits are sufficiently supported by the evidence of record, we affirm.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge