APPEAL NO. 94311

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.*, (1989 Act). On July 15, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. His determination that respondent (claimant) was injured in the course and scope of employment and that appellant (carrier) did not timely dispute compensability was affirmed, but the case was remanded in Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993, for a determination of maximum medical improvement (MMI). On January 27, 1994, a hearing on remand was held in (city), Texas. The hearing officer determined that the claimant reached MMI on March 1, 1993, with zero percent impairment. Carrier appeals stating that the great weight of the evidence shows that claimant reached MMI prior to the time the designated doctor evaluated him on March 1, 1993, the date of MMI found by that doctor; in addition carrier points out that the designated doctor found hospitalization and certain illnesses of claimant were not related to the compensable injury. Claimant provided no reply.

DECISION

We affirm.

The evidence was summarized in Appeal No. 93774, *supra*. On remand, the hearing officer made certain findings, to be added to those not disturbed by Appeal No. 93774, after being provided documentary evidence but no additional testimony. Briefly, claimant was not a long term employee when on (date of injury), he was overcome while painting the inside of a tank. There was evidence that claimant's injury was transitory; however, claimant was found to have been injured and the evidence sufficiently supported that finding. Thereafter, claimant was treated for pneumonia, had a thoracotomy, was treated for tuberculosis, and had his gallbladder removed. The evidence also sufficiently supported the finding that the carrier did not dispute compensability within the 60-day limitation of Section 409.021.

While an issue at hearing had questioned when MMI was reached, no date of MMI was found by the hearing officer. In addition, the designated doctor had indicated in his report that while MMI was found on March 1, 1993, with zero percent impairment, only limited medical records had been made available for his consideration in reaching his decision on these questions.

The hearing officer's decision on remand, signed February 15, 1994, indicates that upon receipt of Appeal No. 93774, he queried the designated doctor, (Dr. C) on December 14, 1993, about his decision as to MMI and indicated to him that medical records were being provided for his examination. Thereafter, Dr. C's reply stated that he reviewed the additional medical records; he concluded, "review of these records does not alter my opinion as expressed in my report of 3/1/93." In his letter, Dr. C also opined that he saw no relationship between certain treatment and the claimant's exposure to "solvents and paints."

While Dr. C in his letter of December 1993 indicates that no connection exists between the compensable injury and parts of claimant's treatment, the designated doctor's opinion as to injury is not entitled to any presumption by the 1989 Act, in contrast to his opinion concerning MMI and impairment rating (IR) when appointed for those questions. *See* Texas Workers' Compensation Commission Appeal No. 93290, decided June 1, 1993. In addition, the only question on remand was in regard to MMI. Appeal No. 93774 had affirmed the findings of fact concerning injury and the inability of the carrier to contest compensability because its dispute of that issue was not timely. Carrier also contends that MMI occurred prior to March 1, 1993, and that the designated doctor's opinion indicates as much. Texas Workers' Compensation Commission Appeal No. 931190, decided February 8, 1994, held that a doctor's report is not in error because he picks the date of MMI as the date that he examined claimant even though he indicates that MMI may have been reached some time in the past.

The only other medical records in the record of the hearing are those of (Dr. S) who examined claimant for the carrier in December 1992. Dr. S did not address MMI or IR, but found no connection between the paint exposure and the pneumonia claimant had thereafter. (No reports of claimant's treating doctor were made part of the record, although both Dr. S and Dr. C refer to portions of those records.)

The findings of fact, entered after the hearing on remand, that MMI was reached on March 1, 1993, and that the IR was zero percent were not contrary to the great weight of other medical evidence, and were sufficiently supported by the evidence. The decision and order that add an MMI date of March 1, 1993, and an IR rating of zero percent to the decision and order previously made on July 15, 1993, are not against the great weight and preponderance of the evidence and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge