

APPEAL NUMBER 94992
FILED SEPTEMBER 8, 1994

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* On May 27, 1994, a hearing was held in (City), Texas, with (hearing officer) presiding. He determined that respondent (claimant) did not show that her hip and back were compensably injured on _____, but that claimant had not been shown to have reached maximum medical improvement (MMI); he also found no basis to allow recoupment of certain income benefits paid to claimant. Claimant was not present at the hearing and does not appeal this decision, but appellant (state) does appeal the determinations regarding MMI.

DECISION

We affirm.

Claimant is a nurse's aide who worked for the (school). She had several injuries prior to the one in issue of _____, including an alleged injury on (alleged date of injury). The claimant did not appear for the hearing; however, evidence was submitted. The hearing officer indicated he would wait 48 hours to hear from claimant, instructing the other party that if he heard from her in that time, he would provide her the chance to show cause why she did not appear. The ombudsman stated that appointments with the claimant had not been kept by the claimant. The hearing officer states in his decision that no contact was made by claimant within 48 hours, so he then proceeded to a decision in this case.

Two issues at the hearing were not appealed and will not be reviewed. One issue was decided against claimant; the injury reported as occurring on _____, was not shown to be compensable. The other issue was against the state; no recoupment was allowed for income benefits paid.

The evidence showed that claimant received notice of MMI and an impairment rating (IR) in June 1993. Ms. B, claims coordinator of the school, in response to questions from the hearing officer, testified that on June 22, 1993, she talked with claimant about the MMI finding of Dr. G, her treating doctor. Ms. B added that claimant told her she had not reached MMI as stated on the form.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. While MMI can only be reached based on reasonable medical probability, Texas Workers' Compensation Commission Appeal No. 92392, decided September 21, 1992, stated that a claimant can raise a dispute as to MMI without medical evidence. More importantly to this case, Texas Workers' Compensation Commission Appeals No. 93200, decided April 14, 1993, and Appeal No. 93810, decided October 26, 1993, held that notice given to the employer or carrier's representative that MMI was

disputed was sufficient, adding that it would be in the claimant's interest to notify the Texas Workers' Compensation Commission (Commission) also so that the dispute resolution process could be initiated.

The testimony of the school's claims coordinator was sufficient upon which to find that claimant disputed MMI in June 1993. In addition, the carrier provided a form notification which shows that claimant's temporary income benefits were resumed on June 30, 1993. The hearing officer could infer from the resumption of payment of benefits that claimant had communicated her disagreement with the doctor's statement that MMI had been reached with zero percent IR. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. App.-San Antonio 1981, no writ).

The appellant also points out that in the hearing officer's statement of evidence, reference is made to the claimant having notified the Commission in October 1993 (which would be beyond the 90 day period set forth in Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). Evidence that the claimant did not contact the Commission until some later time does not conflict with evidence and a finding of fact that claimant disputed MMI with the employer in June 1993. Another conflict is suggested by the carrier in stating that the decision makes a finding of fact that MMI was reached while a conclusion of law says MMI was not reached. Finding of Fact No. 4 only states that claimant's doctor, Dr. G certified MMI on March 9, 1993. (This is the same initial assignment of IR that claimant disputed.) The conclusion of law takes both factors into consideration and determines that MMI has not been reached; the finding regarding MMI and conclusion regarding MMI are not in conflict.

With the hearing officer having found that claimant timely disputed the initial assignment of MMI, and with no evidence that a designated doctor had been appointed to give an opinion as to MMI, and with a finding that the _____, allegation was not shown to be a compensable injury, there was no showing that claimant reached MMI. It may be observed that in this instance, with no compensable injury, an issue of MMI stemming from that injury would be of little significance.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge