

APPEAL NO. 991154

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 10, 1999. She determined that the appellant (claimant) had undergone a substantial change in medical condition since the time she was found to have reached maximum medical improvement and assigned a 14% impairment rating (IR); but that as a result of the Decision and Order of the benefit contested case hearing and the affirmation by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 941688, decided February 1, 1995 (unpublished), the Texas Workers' Compensation Commission (Commission) does not have jurisdiction to determine the issue of the claimant's IR. The claimant appealed; contended that, since the hearing officer determined that she had undergone a substantial change of medical condition, the Commission had jurisdiction to consider her IR; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that her IR is 24% as certified by the designated doctor in an amended report. The respondent (self-insured) replied, urged that the hearing officer properly determined that the Commission does not have jurisdiction to change the claimant's IR, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

The claimant testified that on _____, she injured her back adjusting the driver's seat of a bus she was driving; that she received conservative treatment; that she went to Dr. B, the Commission-selected designated doctor; that Dr. B told her that her IR was 15%; that the report of Dr. B said that her IR was 14%; that Dr. H became her treating doctor; that the Commission approved spinal surgery; that Dr. H performed surgery on October 20, 1997; that only the front part of the surgery was performed because of her age and condition; that she did not want to have the other surgery performed; and that Dr. B assigned a 24% IR. She said that after she received the decision of the Appeals Panel, she filed an appeal in court; that she went to court herself; and that after some discussion, the judge dismissed the jury. She testified that she went to Dr. H, but did not pursue the appeal in court.

In Appeal No. 941688, *supra*, the summary of the evidence states that the claimant said that she saw a report from Dr. B that her IR was 15%, but that she currently did not have a copy of a report indicating that her IR was 15%. The Appeals Panel affirmed the decision of the hearing officer that the claimant reached MMI on August 19, 1993, with a 14% IR. A report indicates that Dr. H performed a lumbar fusion at L4-5 and L5-6 on October 20, 1997. On April 23, 1998, a Commission benefit review officer wrote to Dr. B asking him if there had been a misdiagnosis, a substantial change in medical condition, or inappropriate treatment and asking if the information provided changed his assessment. In a letter dated May 5, 1998, Dr. B stated that there was no misdiagnosis and that based on the medical records her IR would be somewhere around 21%. He explained that the

records do not indicate that the posterior portion of the 360 degree procedure was carried out; that if it had been carried out, an additional three percent could be added to the IR; and that this was the best that he could do without reexamining the claimant.

In addition to the argument concerning change of medical condition, the claimant contended that since the benefit review officer asked Dr. B to render another IR, the Commission had jurisdiction to reconsider her IR. It appears that the additional information was obtained from Dr. B so that the issue of the claimant's IR could be resolved if it was determined that the Commission had jurisdiction to determine the claimant's IR.

Section 410.205(a) provides that a decision of the Appeals Panel regarding benefits is final in the absence of a timely request for judicial review. Section 410.303 provides that the party appealing an Appeals Panel decision has the burden of proof by a preponderance of the evidence. The claimant did not indicate that evidence had been presented in court and did not offer a copy of a court decision. There is nothing to indicate that the decision of the Appeals Panel did not become final. The hearing officer did not err in determining that the Commission does not have jurisdiction to determine the claimant's IR.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge