APPEAL NO. 991740

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 22, 1999. He (hearing officer) determined that the maximum medical improvement (MMI) date of the appellant (claimant) is March 13, 1997, and that claimant had disability from February 9, 1996, to March 13, 1997. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that her MMI date is March 13, 1997. Claimant asserts that the designated doctor did not address her cervical impairment in his March 13, 1997, report, and, therefore, "no impairment rating (IR) was assigned." Claimant is apparently asserting that the designated doctor's first Report of Medical Evaluation (TWCC-69) is invalid, so the MMI date stated on the document is not a valid MMI date. We first note that the parties stipulated that claimant's IR is seven percent. A review of the designated doctor's first report dated March 13, 1997, reveals that the six percent impairment he certified on March 13, 1997, was for impairment of the cervical spine. Therefore, claimant's assertion is without merit.

Claimant next contends that the hearing officer should have given presumptive weight to the third report of the designated doctor, in which the designated doctor certified an MMI date of February 18, 1998, the stipulated statutory MMI date. Claimant contends that her leg gave way and she fell after March 13, 1997, which caused a change in her condition.

"Maximum medical improvement" is defined, pertinent to this case, as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated . . . ." Section 401.011(30)(A). The presence of pain is not, in and of itself, an indication that an employee has not reached MMI. A person who is assessed to have lasting impairment may indeed continue to experience pain as a result of an injury. Texas Workers' Compensation Commission Appeal No. 93007, decided February 18, 1993. Pursuant to Sections 408.122(c) and 408.125(e), the report of the designated doctor chosen by the Texas Workers' Compensation Commission (Commission) has presumptive weight and the Commission shall base its determination of whether the employee has reached MMI and the IR on that report unless the great weight of the other medical evidence is to the contrary. A designated doctor may, with proper reason, and in a reasonable period of time, amend his original report of MMI and IR. Texas Workers' Compensation Commission Appeal No. 960960, decided July 3, 1996.

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant did not testify. In an Initial Medical Report (TWCC-61), Dr. W stated that claimant had blurred vision, severe headaches and pain in the back of her head and neck, and that her neurological examination showed "nystagmus with eyes going to left side repeatedly." In a February 8, 1996, report, Dr. W stated that claimant had an acute cervical strain and a concussion. In his first report of March 13, 1997, the designated doctor stated that: (1) claimant gave a history of falling and hitting her head on a metal bar at work on January 15, 1996; (2) claimant's diagnoses were closed head injury, cervical sprain/strain, and cervical spondylosis; and (3) claimant's six percent IR was for specific disorders of the cervical spine under Section IIC of Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. In his second report dated May 18, 1998, the designated doctor certified that claimant reached MMI on May 18, 1998, and raised the IR to seven percent. In an accompanying report, the designated doctor stated that: (1) the impairment was for cervical spondylosis under Table 49, section IIIA; (2) claimant exhibited marked symptom magnification; (3) claimant had no range of motion (ROM) in her neck, which the designated doctor did not believe was a valid measurement; (4) claimant did not exhibit memory loss or confusion; and (5) claimant's anxiety and depression were unrelated to the injury. In his third TWCC-69, dated October 26, 1998, the designated doctor certified that claimant reached MMI on February 18, 1998, with an IR of seven percent. There was no accompanying report in the record. A document apparently filled out by the designated doctor stated that claimant's medical condition had declined since March 13, 1997, but no specifics were given in this regard. In an August 8, 1996, TWCC-69, Dr. L stated that claimant reached MMI on July 23, 1996, with an IR of 12%. The 12% IR included impairment specific disorders of the cervical spine and loss of cervical ROM. Claimant's medical records indicate that she was treated with physical therapy, trigger point injections, and a TENS unit after March 13, 1997. Dr. H testified that claimant's March 17, 1997, MMI date should not have been changed by the designated doctor because claimant's condition did not substantially change after that date.

At the CCH, claimant contended that the February 18, 1998, MMI date from the designated doctor's third report should apply. The hearing officer determined that claimant's MMI date was the date listed in the designated doctor's first report, noted claimant's symptom magnification, and stated that no substantial change in claimant's condition or misdiagnosis were shown by the evidence. The hearing officer also found that "the great weight of the other medical evidence is not contrary to the designated doctor's 3-13-97 MMI date." The hearing officer apparently determined that the amendment of the MMI date was not done within a reasonable time and for a proper purpose. We have reviewed the designated doctor's amended report and the other medical evidence in this case. Given the conflicting medical evidence on the date of MMI, we cannot conclude that

the hearing officer's decision to give presumptive weight to the designated doctor's March 13, 1997, date is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Regarding claimant's assertions that she fell after March 13, 1997, we note that her treating doctor could not explain the reasons for her claimed lower extremity weakness. From the evidence, the hearing officer could conclude that this claimed condition was not related to claimant's compensable injury. We perceive no error in this regard.

This case is unique in that the MMI date is from the designated doctor's first report and the IR was stipulated to by the parties, but was certified by the designated doctor in the two later reports. We have noted concern regarding the use of the date from one doctor's report for purposes of determining MMI, then using the IR of another doctor whose rating is based upon a different MMI date. *See* Texas Workers' Compensation Commission Appeal No. 92546, decided November 23, 1992. However, the IR in this case was stipulated and the parties agreed on the issues to be determined. Both the IR and the MMI date came from the designated doctor. Under the facts of this case, we perceive no error.

Claimant contends the hearing officer erred in determining that her disability period ended on March 13, 1997. The hearing officer determined that "there can be no disability after the date of MMI," and that "any inability of claimant to obtain and retain employment at wages equivalent to [her] preinjury wages, beyond 3-13-97, is due to something other than the compensable injury . . . ."[1] Claimant contends she had disability through February 18, 1998.

The parties stipulated that claimant had disability from February 9, 1996, to March 13, 1997. There was medical evidence from Dr. C that claimant's disability continued due to her headaches, cervical problems, and neck pain.

The claimant in a workers' compensation case has the burden of proof regarding disability. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. The hearing officer in this case considered the evidence regarding claimant's continuing treatment and the medical evidence of continuing disability, but found that claimant did not have disability after March 13, 1997. In light of the hearing officer's statements about symptom magnification and the medical evidence in the record, we conclude that the hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

[1]Disability does not necessarily end as of the date of MMI, although temporary income benefits are not paid after that date.

We affirm the hearing officer's decision and order.

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Judy Stephens
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Alan C. Ernst
Appeals Judge