APPEAL NO. 992951

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 December 9, 1999. He (hearing officer) determined that the appellant (claimant) reached maximum medical improvement (MMI) on October 31, 1991, and has a six percent impairment rating (IR) as certified by Dr. RL, a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals these determinations, contending that she reached MMI on May 24, 1993, with a 15% IR per the amended report of Dr. RL dated July 20, 1999. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable back injury on _____. The claimant sought medical treatment with Dr. M, and was referred to Dr. H, who performed physical therapy, diagnostic testing, and recommended spinal surgery. On November 18, 1991, the carrier had the claimant examined by Dr. LL, and he certified that the claimant reached MMI on November 18, 1991, with a zero percent IR. The claimant testified that in August 1992 Dr. H recommended spinal surgery, but it was denied because of a lack of concurrence. The Commission appointed Dr. RL as the designated doctor and he examined the claimant on September 28, 1992. Dr. RL diagnosed mechanical low back with no current indication, on a clinical basis, for a decompressive laminectomy. After reviewing the claimant's diagnostic tests and medical records, Dr. RL certified that the claimant reached MMI on October 31, 1991, with a six percent IR.

The claimant testified that she disputed Dr. RL's report because his examination was very brief, and he raised her leg to the point that she was in severe pain. On December 7, 1993, spinal surgery was approved and Dr. H performed a lumbar laminectomy at L4-5. The claimant testified that after the surgery she was okay and had physical therapy, but then her condition began to worsen, Dr. H retired, and she began to treat with Dr. S who recommended another surgery. On February 24, 1998, the claimant had a decompressive laminectomy and fusion at L4-S1, and on April 12, 1999, the claimant received a bone stimulator.

On June 15, 1999, a benefit review officer instructed Dr. RL to reexamine the claimant. On July 20, 1999, after reexamining the claimant, Dr. RL amended his report, certifying that the claimant reached MMI on May 24, 1993, with a 15% IR. The claimant asserts that the Commission should adopt the amended report of Dr. RL because it was through no fault of her own that it took such a long period of time to obtain an amended report. The carrier asserts that the first attempted amendment of the designated doctor's report did not occur until December 1998, and that the designated doctor's amendment was not made for a proper reason and within a reasonable period of time.

Section 408.122(c) and Section 408.125(e) provide in part that the report of the designated doctor has presumptive weight, and the Commission shall base its determination of MMI and IR on the report unless the great weight of the other medical evidence is to the contrary. The Appeals Panel has addressed cases where a designated doctor amends his or her IR report after statutory MMI and after the claimant has surgery. We have held that a designated doctor may, with proper reason, and in a reasonable amount of time, amend the original report of MMI and IR, for various reasons which can include, but are not limited to, the need for surgery. *See* Texas Workers' Compensation Commission Appeal No. 941168, decided October 14, 1994. The report may be amended where there were incomplete or erroneous facts when the first report was rendered that are subsequently taken into account in amending the report. *See* Texas Workers' Compensation Commission Appeal No. 941600, decided January 12, 1995. Whether a doctor has amended his report for a proper reason and within a reasonable amount of time is essentially a question of fact. Texas Workers' Compensation Commission Appeal No. 960888, decided June 18, 1996. In cases where a claimant has surgery after the designated doctor certifies an IR, the Appeals Panel considers whether the designated doctor's MMI and IR certification took place before or after the date of statutory MMI. Where a claimant is determined to have been at MMI by statute, a distinguishing factor is whether the surgery was "under active consideration" at the time of statutory MMI. Texas Workers' Compensation Commission Appeal No. 990833, decided June 7, 1999; Texas Workers' Compensation Commission Appeal No. 950861, decided July 12, 1995; Texas Workers' Compensation Commission Appeal No. 950496, decided May 15, 1995; Texas Workers' Compensation Commission Appeal No. 941243, decided October 26, 1994.

The hearing officer found that there was no substantial change of condition or significant new information discovered between the initial certification by Dr. L and his amended report; that Dr. RL's amendment to his original report was not made within a reasonable time; and that the great weight of the other medical evidence is not contrary to Dr. RL's initial certification. At the time of Dr. RL's first report, a request for surgery had been turned down and Dr. RL did not believe surgery was appropriate. The claimant renewed the process of approval and had spinal surgery performed on December 7, 1993, over six months after statutory MMI. Thus, to some degree, spinal surgery was under active consideration at the time the claimant reached statutory MMI. However, Dr. RL was aware of the claimant's continuing desire for spinal surgery at the time he examined the claimant on September 28, 1992. We note that the amendment considering the claimant's surgeries was made approximately six years after the date of statutory MMI and seven years after his original certification. There is no indication that the claimant did anything to initiate an amendment of Dr. RL's report until December 1998. Therefore, the hearing officer could find Dr. RL's amendment was done within a reasonable amount of time.

In this case, the hearing officer considered all of the medical evidence presented and did not find that the other medical evidence rose to the level of great weight against the six percent IR assigned by Dr. RL. The hearing officer determined that the original report of the designated doctor is entitled to presumptive weight, that the great weight of the medical evidence is not contrary to the original report of the designated doctor, and that the claimant reached MMI on October 31, 1991, with a six percent IR. These

determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Judy L. Stephens
Appeals Judge