

APPEAL NO. 000066

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 6, 1999. The hearing officer determined that the respondent (claimant) did not sustain a compensable neck injury in addition to the compensable knee injury on _____, and that she had disability from March 4 through October 1, 1999. The appellant (carrier) appeals the disability determination, contending error as a matter of law.

The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The extent of injury determination has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The carrier's sole argument on appeal is that the hearing officer should have ended disability on July 1, 1999, because that was the date of maximum medical improvement (MMI). We observe that there was no issue of date of MMI at the CCH. Section 408.101(a) provides that an employee is entitled to temporary income benefits (TIBS) if the employee has disability and has not attained MMI. Section 408.102 further provides that TIBS continue until the employee reaches MMI. The Appeals Panel has noted in the past the distinction between the concepts of disability and MMI, and that disability may extend after MMI. Texas Workers' Compensation Commission Appeal No. 992797, decided January 27, 2000; Texas Workers' Compensation Commission Appeal No. 991481, decided August 30, 1999. To the extent that the carrier is correct in its assertion that July 1, 1999, is the date of MMI, then TIBS would not longer be owed as of this date. In any case, we perceive no error of law in the hearing officer's finding of disability without regard to the date of MMI.

Because the carrier's appeal is narrowly drawn to the question of the interaction between date of MMI and disability, and the carrier essentially concedes disability up to July 1, 1999, we perceive no need to review for factual sufficiency the hearing officer's finding of disability up to October 1, 1999.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge