

APPEAL NO. 000275

Following a contested case hearing (CCH) held on January 3, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant) waived her right to dispute the designated doctor's impairment rating (IR) by waiting too long to dispute it. The claimant appeals, contending that the evidence is not sufficient to support the decision and order of the hearing officer. The respondent (carrier) responds, urging affirmance.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she waived the right to dispute the designated doctor's report of October 5, 1995, by failing to request an amended designated doctor's report until September 24, 1999. On October 5, 1995, the designated doctor signed a Report of Medical Evaluation (TWCC-69) certifying that claimant reached maximum medical improvement (MMI) on October 3, 1995, with an IR of two percent. Claimant asserts that the designated doctor did not rate all of her injury and rated only a left knee injury. She notes that carrier later accepted her right knee injury in _____ and her back injury in 1998, but only the left knee injury was considered by the designated doctor at the time of his 1995 report. The hearing officer determined that claimant failed to establish that she requested an amendment to the designated doctors' IR before September 24, 1999.

In this case, we note the following relevant facts:

_____	date of compensable injury
October 3, 1995	date of MMI found by designated doctor
October 5, 1995	designated doctor certified two percent IR
June 1996	statutory MMI date noted by hearing officer
July 9, 1996	claimant requests benefit review conference (BRC) regarding extent of injury to the right knee also
December 30, 1996	MRI shows lumbar disc herniation
early 1997	carrier accepts right knee injury
August 25, 1997	claimant requests BRC regarding extent of injury to the lumbar spine

February 6, 1998 parties agree that injury extends to lumbar spine

September 24, 1999 claimant's first request for designated doctor to amend his October 5, 1995, TWCC-69

The Appeals Panel has stressed the need for finality in MMI and IR determinations and required that a challenge to a designated doctor's report had to take place in a reasonable amount of time. See Texas Workers' Compensation Commission Appeal No. 980355, decided April 6, 1998, where a three-year lapse between the designated doctor's first report and a request to amend it was considered an unreasonable delay; Texas Workers' Compensation Commission Appeal No. 980999, decided June 29, 1998, where an amendment some 28 months after MMI was not considered reasonable; Texas Workers' Compensation Commission Appeal No. 982120, decided October 21, 1998, where we commented that the "resolution of IR cannot be indefinitely delayed to await the results of a potential lifetime course of medical treatment for the injury and its sequelae"; and Texas Workers' Compensation Commission Appeal No. 980503, decided April 27, 1998, where an attempt to dispute an IR some three years after it was initially given was not allowed.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 overwhelming weight 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.

This case involves a request for an amendment to a designated doctor's IR because of later agreement regarding or acceptance regarding the scope of the original compensable injury. In this case, the original injury accepted was a left knee injury, but a right knee injury and lumbar injury were later accepted or agreed to be part of the injury. The Appeals Panel has recognized that a request to amend a designated doctor's report due to later additions regarding the scope of the compensable injury may come too late to be considered "within a reasonable time." Texas Workers' Compensation Commission Appeal No. 992858, decided January 31, 2000. In this case, claimant was pursuing the extent or scope of her injury regarding the right knee by July 1996 and regarding her back by _____. Regarding the right knee, carrier accepted this injury in early _____, but claimant did not seek an amendment of the designated doctor's report for over two years and six months after that date. The request to amend the designated doctor's report was made over three years after the statutory MMI date. Regarding the lumbar spine, it was agreed that the injury included the lumbar spine in February 1998, but the request to amend the designated doctor's report was not made until over one year and seven months later. Although claimant underwent surgery to her right knee and lumbar spine, these surgeries were not contemplated at the time of statutory MMI. The Appeals Panel has recognized that there has been no clear delineation of what constitutes a reasonable time

in the particular fact situation being considered where the scope of the injury is being determined or resolved over a period of time. Appeal No. 992858. In this case, claimant delayed in pursuing the amendment of the designated doctor's IR for too long after the right knee and lumbar injuries were agreed to or accepted as part of the injury. Further, surgery to the right knee and lumbar spine was not contemplated at the time of statutory MMI. Considering these factors, we conclude that the hearing officer's determination that claimant's request for an amendment to the designated doctor's report was not made within a reasonable time is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, the hearing officer did not err in determining that claimant waited too long to dispute the designated doctor's IR.

Claimant asserts that "by limiting the issue at the [CCH] to whether claimant waited too long to dispute the designated doctor's [IR], the [hearing officer] is thwarting claimant's right to pursue judicial review under Section 410.307" We have reviewed claimant's contentions in this regard and perceive no reversible error in this case.

Claimant contends that the hearing officer "limited" the issue in this case and that the issue that "should have been" litigated was "what is claimant's IR." However, the issue reported out of the BRC was the issue agreed to by the parties at the CCH. Claimant did not complain at the CCH that the hearing officer limited the issues in this case. We perceive no error.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

CONCURRING OPINION:

The claimant contends that the case involves a change of medical condition. I do not agree. In my opinion, it involves late determinations of the extent of the compensable injury. Texas Workers' Compensation Commission Appeal No. 980355, decided April 6, 1998, cited in the decision in this case, involves a substantial change of medical condition. In it, the Appeals Panel stated that, among other things, when the discovery of the change of condition was made and the diligence after the discovery was made should be considered. In her Decision and Order in the case before us, the hearing officer concentrates on dates, but also states that medical records show treatment of both knees and the low back prior to the right knee and low back being accepted as part of the compensable injury. It would have been preferable for the Decision and Order to show more consideration of diligence by the claimant. However, the evidence is sufficient to support the decision of the hearing officer.

Tommy W. Lueders
Appeals Judge