

APPEAL NO. 000306

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 10, 2000, a hearing was held. The hearing officer determined that respondent (claimant) has not reached maximum medical improvement (MMI) from an injury sustained on _____, and that he has had disability from May 14, 1999, through August 13, 1999, and from August 31, 1999, through the date of the hearing. Appellant (carrier) asserts that claimant's unemployment after August 12, 1999, is the result of his termination for use of drugs and that he had reached MMI on August 12, 1999; carrier also says that medical reports of claimant's disability are unsubstantiated and that the designated doctor did not indicate she reviewed physical therapy reports and films of studies performed, making her report against the great weight of medical evidence. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant worked for (employer) on _____. The parties stipulated that claimant sustained a compensable injury on _____, when he slipped and fell at work and that Dr. B is the designated doctor. The only issues were MMI and disability.

Dr. S first treated claimant on _____, for a bruised right shoulder and a cervical and lumbar strain, anticipating that claimant would have no disability after two to three weeks. Physical therapy was provided. Unfortunately, records of Dr. H were not provided from the inception of his care. In his report of MMI and impairment rating (IR) provided on August 12, 1999, he says that he first treated claimant on July 19, 1999. Dr. H's report appears to indicate that the right shoulder was the focal point of treatment. He returned claimant to work with restrictions on August 4, 1999, but claimant then saw Dr. H again saying he had not returned to work because of a pending medical review. Dr. H then noted no pain and full range of motion in the right shoulder on August 12, 1999, and found MMI on that date with a zero percent IR. Claimant was returned to work "effective 8-13-99."

Claimant was then terminated on August 16, 1999, when he returned to work based on his earlier release to work, for failing a drug test which had been given on May 12, 1999.

Claimant began treatment with Dr. P on August 31, 1999, who immediately reported that he was not at MMI and could not work. Dr. P continued to say claimant could not work in December 1999 in a short note that indicates it remained in effect to the date of hearing.

Dr. B was appointed as the designated doctor. She saw claimant on October 19, 1999, noting that she reviewed records of Dr. H and Dr. S, along with Dr. F and Dr. P. She found the shoulder to be tender and to have some restricted range of motion and concluded that claimant had not reached MMI. Subsequent to her report, the carrier had

claimant examined by Dr. L, who opined that there is no objective evidence of injury beyond mild to moderate sprains/strains. He said that claimant reached MMI no later than August 31, 1999. An MRI of the right shoulder performed on November 24, 1999, showed "marked anterior cuff tendinosis" and a small tear; there was also arthrosis with "suggestion of impingement."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. While termination for cause may be found to be the basis for a claimant's inability to obtain and retain employment at wages earned prior to an injury, termination for cause does not necessarily preclude a continuation or initiation of disability if the claimant is unable to work because of the compensable injury. See Texas Workers' Compensation Commission Appeal No. 970089, decided February 28, 1997.

Whether or not Dr. P's repeated decisions to keep claimant off work were credible was a determination for the hearing officer to make. Similarly, while it is always good medical practice for a doctor to personally review films of studies, Dr. B, as designated doctor, is not required by statute or rule to do so. Compare to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(i)(2), which requires personal review of films. The designated doctor is given presumptive weight in regard to MMI. See Section 408.122. In this case we cannot say that the report of the designated doctor is contrary to the great weight of other medical evidence. We note that an MRI of the shoulder may be interpreted to show some pathology.

The evidence found in the report of Dr. H is sufficient to support a finding of disability to August 13, 1999, not through August 13, 1999, and that part of the decision is reformed accordingly. The evidence found in the reports of Dr. P is sufficient to support disability from August 31, 1999, to the date of hearing. That another fact finder may have reached another determination is not a sound basis for an appellate body to reverse a factual determination.

Finding that the decision and order, as reformed to state that disability existed from May 14, 1999, to August 13, 1999, and from August 31, 1999, through the date of hearing, are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Dorian E. Ramirez
Appeals Judge