

APPEAL NO. 000802

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 31, 1999. In her first decision and order, the hearing officer determined that respondent (claimant) reached maximum medical improvement (MMI) on September 15, 1998, with a six percent impairment rating (IR), in accordance with the first report of the designated doctor, Dr. KI. Claimant appealed these determinations, apparently contending that the hearing officer reached an improper conclusion based on the evidence and applicable law. Appellant (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 992288, decided December 1, 1999, reversed the hearing officer's decision and remanded the case for findings of fact and for reconsideration of the issues. After a March 22, 2000, remand hearing, the hearing officer issued a decision and order on remand. In that decision, the hearing officer determined that claimant reached MMI, on the statutory date of MMI, on October 21, 1999, with a 22% IR, as found by the designated doctor, Dr. KI, in his amended report of February 8, 2000. Carrier appeals, contending that the hearing officer erred in giving presumptive weight to the designated doctor's amended report. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in according presumptive weight to the designated doctor's amended report. Carrier asserts that: (1) the fact that claimant had surgery was not a proper reason for the designated doctor to amend his report; (2) the amendment was not done within a reasonable time; and (3) the focus should not be on whether surgery had not been contemplated at the time of statutory MMI.

The procedural history and applicable law are set forth in our decision in this case. Appeal No. 992288, *supra*. The facts of the case are summarized in the hearing officer's decisions. Whether the designated doctor amended his report within a reasonable time and for a proper purpose were fact issues for the hearing officer. We have reviewed the hearing officer's determinations in this case and we conclude that they are 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). In our prior decision, we addressed carrier's assertions regarding the relevant time period to consider regarding when surgery was contemplated. Appeal No. 992288. We would note, however, that while the hearing officer found that claimant improved after the surgery, that finding of fact was not necessary to the decision to give presumptive weight to the designated doctor's amended report. Texas Workers' Compensation Commission Appeal No. 990659, decided May 12, 1999.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge