

APPEAL NO. 001126

On April 20, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that the Texas Workers' Compensation Commission (Commission) has jurisdiction to determine the date of respondent/cross-appellant's (claimant) maximum medical improvement (MMI) and claimant's impairment rating (IR); that claimant reached MMI on August 19, 1997, with a 37% IR; that claimant is entitled to supplemental income benefits (SIBs) for the first and second quarters; and that claimant is not entitled to reimbursement of travel expenses for medical treatment. Appellant/cross-respondent (carrier) appeals the hearing officer's decision that the Commission has jurisdiction to determine MMI and IR; that claimant reached MMI on August 19, 1997; that claimant has a 37% IR; and that claimant is entitled to SIBs for the first and second quarters. Claimant appeals the hearing officer's decision that he has a 37% IR and that he is not entitled to reimbursement for travel expenses for medical treatment.

DECISION

Affirmed as to denial of reimbursement of travel expenses for medical treatment; reversed and rendered as to the Commission's jurisdiction to determine MMI and IR; the August 19, 1997, date of MMI; the 37% IR; and entitlement to SIBs for the first and second quarters.

Claimant sustained a compensable injury on _____. Dr. W evaluated claimant at carrier's request and Dr. W certified on December 10, 1996, that claimant reached MMI on August 15, 1996, with a zero percent IR. The Commission chose Dr. D as the designated doctor to determine the date of MMI and the IR. Dr. D certified on June 10, 1997, that claimant reached MMI on June 3, 1997, with a 12% IR. A CCH was held on October 16, 1997, on the disputed issues of whether Dr. W's certification of MMI and IR became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) and the date of MMI and the IR. The hearing officer decided that Dr. W's certification of MMI and IR did not become final and that claimant reached MMI on June 3, 1997, with a 12% IR. Both parties appealed the hearing officer's decision. In Texas Workers' Compensation Commission Appeal No. 972362, decided December 29, 1997, the Appeals Panel affirmed the hearing officer's decision that Dr. W's certification of MMI and IR did not become final, but reversed the hearing officer's decision that the claimant reached MMI on June 3, 1997, with a 12% IR and remanded the case to the hearing officer on the issues of the date of MMI and the IR. Per the instructions of the Appeals Panel, the hearing officer made further inquiry of Dr. D regarding the date of MMI and the IR and Dr. D responded to the hearing officer's inquiry by letter dated January 26, 1998. Dr. D wrote that the Commission had determined that claimant's lumbar and cervical regions were part of the compensable injury and that based on that decision, claimant had not reached MMI and that additional impairment would need to be assessed after additional treatment is performed.

Following a CCH on remand, the hearing officer decided that claimant reached MMI by operation of law on August 19, 1997, and that it was premature to assess an IR. Both parties appealed the hearing officer's decision on remand. In Texas Workers' Compensation Commission Appeal No. 980502, decided April 15, 1998, the Appeals Panel noted that the hearing officer had not sent Dr. D's letter of January 26, 1998, to the parties for their comments prior to issuing his decision on remand, and the Appeals Panel reversed the hearing officer's decision that claimant reached MMI on August 19, 1997, and his decision that it was premature to assess an IR, and rendered a decision that the issues of MMI and IR had not been properly determined on remand and that the dispute resolution process to resolve those issues must begin again.

On May 21, 1998, carrier filed a petition in district court for judicial review of the Appeals Panel decision in Appeal No. 980502, asserting that the two issues to be decided by a jury in the cause are the claimant's date of MMI and claimant's IR. Claimant filed an answer and counterclaim.

On July 6, 1998, Dr. D certified that claimant reached MMI on August 19, 1997, with a 37% IR.

A CCH was held on April 20, 2000, to decide the issues of whether the Commission has jurisdiction to determine the date of MMI and the IR; claimant's date of MMI; claimant's IR; whether claimant is entitled to SIBs for the first quarter from October 6, 1999, to January 4, 2000; whether claimant is entitled to SIBs for the second quarter from January 5, 2000, to April 5, 2000; and whether claimant is entitled to reimbursement of travel expenses for medical treatment. The hearing officer decided that the Commission has jurisdiction to determine the date of MMI and the IR; that claimant reached MMI on August 19, 1997; that claimant has a 37% IR; that claimant is entitled to SIBs for the first and second quarters; and that claimant is not entitled to reimbursement for travel expenses for medical treatment.

Carrier asserts that the Commission does not have jurisdiction over the issues of MMI and IR because those issues are in litigation in district court.

Section 410.205(b) provides that the decision of the Appeals Panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G. Section 410.207 provides that during judicial review of an Appeals Panel decision on any disputed issue relating to a workers' compensation claim, the Commission retains jurisdiction of all other issues related to the claim.

Because the carrier timely sought judicial review of the Appeals Panel decision in Appeal No. 980502 on the issues of MMI and IR on May 21, 1998, we hold that the Commission did not have jurisdiction to determine the issues of MMI and IR at the CCH on April 20, 2000. We reverse the hearing officer's decision that the Commission has jurisdiction to determine claimant's date of MMI and claimant's IR and his decision that claimant reached MMI on August 19, 1997, with a 37% IR and we render a decision that

the Commission does not have jurisdiction to determine claimant's date of MMI and his IR because the issues of MMI and IR are pending before the district court.

Based on reports of claimant's treating doctor, Dr. DU, and the reports of referral doctors, the hearing officer found that claimant had no ability to work during the qualifying periods for the first and second quarters and decided that claimant is entitled to SIBs for the first and second quarters. The dates of the first and second quarters and the qualifying periods for those quarters that were found by the hearing officer were based on his determinations of an August 19, 1997, date of MMI and a 37% IR. Carrier contends that claimant had some ability to work and that claimant reached MMI on June 3, 1997, with a 12% IR. Claimant contends that his IR should be closer to 50% based on a report of Dr. DU.

Although the Commission retains jurisdiction over claimant's SIBs entitlement, it is not possible to make a determination on SIBs entitlement at this time. This is so because one of the requirements for SIBs entitlement is that the employee has an IR of 15% or more, and in order to determine whether claimant met the good faith and direct result criteria for SIBs during the qualifying periods, it is necessary to have a determination on the date of MMI and the IR to calculate the dates of the quarters and qualifying periods (the parties did not stipulate as to MMI date, IR, the dates of the quarters, or the dates of the qualifying periods). Section 408.142. Appeal No. 980502 did not decide what date claimant reached MMI or what his IR is (although MMI and IR were the issues on appeal), and since carrier sought judicial review of the Appeals Panel decision in Appeal No. 980502 and the issues of MMI and IR based on the evidence in the record are pending before the district court, the Commission did not have jurisdiction to decide the MMI and IR issues at the April 20, 2000, CCH. Consequently, we do not have a determination of the date of MMI or the IR upon which to base entitlement to SIBs and it is therefore necessary to reverse the hearing officer's decision that claimant is entitled to SIBs for the first and second quarters and render a decision that entitlement to first and second quarter SIBs cannot be determined at this time.

With regard to the issue of reimbursement for travel expenses for medical treatment, Rule 134.6 provides for travel reimbursement when it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care for the compensable injury and where the mileage is greater than 20 miles, one way. That rule also provides in part that reimbursement shall be paid based upon the current travel rate for state employees and that the shortest route between two points shall be used. Claimant testified that Dr. DU has several offices, the closest of which is less than 20 miles from his house. Claimant said that he went to Dr. DU's closest office on some occasions but that he was ordered by Dr. DU to go to Dr. DU's other offices, which are more than 20 miles from his house, on other occasions, and that he seeks reimbursement for the travel to Dr. DU's offices that required traveling more than 20 miles one way. Claimant also testified that he traveled to referral doctors' offices that were 20 miles from his house and that were slightly more than 20 miles from his house. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer found

that claimant was not required to travel more than 20 miles, one way, for medical care, and concluded that claimant is not entitled to reimbursement for travel expenses for medical treatment. We conclude that the hearing officer's decision on the travel reimbursement issue is not contrary to the overwhelming weight of the evidence. Claimant testified that sometimes he had to pay for taxis and for friends to take him to doctor visits and that he is seeking reimbursement of those expenses. Texas Workers' Compensation Commission Appeal No. 951047, decided August 8, 1995, applied Rule 134.6 and reversed a hearing officer's decision that the claimant in that case was entitled to reimbursement for travel expenses by taxi and rendered a decision that the claimant would be entitled to travel reimbursement in accordance with the provisions of Rule 134.6. We do not find that the hearing officer erred in finding against claimant on the travel reimbursement issue.

The hearing officer's decision that claimant is not entitled to reimbursement for travel expenses for medical treatment is affirmed. The hearing officer's decision that the Commission has jurisdiction to determine the date of claimant's MMI and claimant's IR; that claimant reached MMI on August 19, 1997, with a 37% IR; and that claimant is entitled to SIBs for the first and second quarters are reversed and a decision is rendered that the Commission does not have jurisdiction to determine the date of claimant's MMI and claimant's IR because those issues are pending in the district court and entitlement to first and second quarter SIBs cannot be determined at this time.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge