APPEAL NO. 001736

This appeal 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 June 23, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 10, 1998. The hearing officer also determined that claimant did not have disability from August 10, 1998, to November 1, 1998. Claimant appeals both determinations. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision.

DECISION

We reverse and remand.

Claimant contends the hearing officer erred in determining that he reached MMI on August 10, 1998. Claimant timely disputed the August 10, 1998, MMI date and impairment rating (IR) certified on August 10, 1998, by his treating doctor, Dr. W. He asserts that because he disputed the first certification of MMI and IR, the MMI certification did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The parties stipulated that claimant's IR is 19%, which was certified by the designated doctor.

The version of Rule 130.5(e) in effect at all relevant times provided that the first IR assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned. It is undisputed that claimant timely disputed the first IR. Therefore, neither the MMI date nor the IR could be considered final. *See* Texas Workers' Compensation Commission Appeal No. 000202, decided March 20, 2000. A designated doctor was selected and he certified an IR only, as directed by the Texas Workers' Compensation Commission. However, the MMI date had not become final under the 90-day rule and was not ever decided by a designated doctor. The hearing officer stated that, at the benefit review conference (BRC), both claimant and carrier asserted that the MMI date should be August 10, 1998. However, claimant's position at the BRC was that the MMI date was in November 1998, not August 10, 1998. In any case, there was no signed agreement pursuant to Sections 410.029 and 410.030, regarding MMI.

MMI was an issue reported out of the BRC and was an issue in dispute before the hearing officer. Under these facts, the issue of MMI must be addressed by a designated doctor and then by the hearing officer on remand. We reverse the hearing officer's MMI determination and remand for reconsideration of that issue.

Claimant contends the hearing officer erred in determining that he did not have disability from August 10, 1998, through November 1, 1998. From our review of the hearing officer's decision, we conclude that the hearing officer applied an incorrect legal standard in making his disability determination. The hearing officer noted that the evidence of claimant's work restrictions might indicate disability and then noted that claimant had not

made a job search. Generally, no job search requirement is imposed on a claimant who is subject to work restrictions due to a compensable injury. Texas Workers' Compensation Commission Appeal No. 991810, decided October 4, 1999. We do not mean to imply that the hearing officer was required to find that claimant had disability in this case. *See* Texas Workers' Compensation Commission Appeal No. 001031, decided June 21, 2000. The hearing officer could find that claimant did not have disability if the hearing officer determined that the evidence regarding disability is not credible. Appeal No. 001031. We must remand, however, for the hearing officer to decide the disability issue under the proper legal standard.

We reverse that part of the hearing officer's decision that determines that claimant did not have disability from August 10, 1998, to November 1, 1998, and for reconsideration of that issue. We reverse that part of the hearing officer's decision and order that determined that claimant reached MMI on August 10, 1998, and remand for reconsideration of the MMI issue. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Judy L. Stephens
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert E. Lang
Appeals Panel Manager/Judge