

## APPEAL NO. 001773

On July 6, 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 appellant (claimant) reached maximum medical improvement (MMI) on September 26, 1998, with a zero percent impairment rating (IR) and that the claimant did not have disability as a result of the claimant's compensable injury of \_\_\_\_\_. The claimant requests that the hearing officer's decision on MMI and disability be reversed and that a decision be rendered that he reached MMI on July 16, 1999, and that he had disability from January 7, 1999, through July 16, 1999. The respondent (carrier) requests that the hearing officer's decision be affirmed.

### DECISION

Affirmed as reformed herein.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury in the form of an umbilical hernia. The claimant was working as a cook at the time of his injury. The Employer's First Report of Injury or Illness (TWCC-1) states that lost time began on August 1, 1997. The claimant said that he was initially off work for about a year as a result of his injury. The claimant's initial treating doctor was Dr. P. The claimant underwent an umbilical hernia repair in November 1997. The claimant said that he has not had any surgery since the November 1997 surgery and that none has been recommended. In a Report of Medical Evaluation (TWCC-69) dated June 22, 1998, Dr. P certified that the claimant reached MMI on June 22, 1998, with a zero percent IR. Dr. P wrote on June 22, 1998, that the claimant had improved sufficiently to be released from care and that the claimant does not require further treatment.

The claimant said that at the time Dr. P certified that he was at MMI with a zero percent IR, Dr. P released him to return to work and that he returned to work for the employer as a cook, working light duty for a few weeks and then working his regular job. The claimant said that his left side was still hurting when he was released to return to work but that he did not complain to his employer about his pain until shortly before he changed treating doctors to Dr. M in December 1998. The claimant's manager at work testified that the claimant was able to perform the claimant's job duties when the claimant returned to work.

Apparently, the claimant disputed Dr. P's certification of MMI and IR because the Texas Workers' Compensation Commission (Commission) appointed Dr. T as the designated doctor to determine MMI and IR. In a TWCC-69 dated September 27, 1998, Dr. T certified that the claimant reached MMI on September 26, 1998, with a zero percent IR. Dr. T noted that the claimant had a surgically corrected hernia but that the claimant had muscle weakness for which he recommended a muscle strengthening program.

The claimant began seeing Dr. M on January 7, 1999, and Dr. M diagnosed the claimant with an abdominal wall strain and abdominal myositis. Dr. M recommended physical therapy and trigger point injections and took the claimant off of work. The claimant said that Dr. M told him that he would have another hernia if he continued to do the heavy lifting that he did at work and that he should not work while undergoing treatment. Dr. M noted in March 1999 that physical therapy had helped the claimant's pain. Dr. M noted in May 1999 that the claimant's abdominal CT scan was entirely unremarkable and he recommended facet blocks. Dr. G, who was covering for Dr. M on February 4, 1999, wrote that the claimant should have a five percent IR. On August 30, 1999, Dr. M reported that the claimant reached MMI on July 16, 1999, with a three percent IR and that the claimant was encouraged to return to work at a light-to-medium level.

In December 1999, which was over a year after Dr. T had certified that the claimant had reached MMI with a zero percent IR, a benefit review officer (BRO) wrote to Dr. T regarding a dispute of MMI and/or IR and sent Dr. T additional medical reports, apparently relating to Dr. M's assessment and treatment of the claimant, and asked Dr. T for his opinion regarding MMI and IR. In a TWCC-69 dated January 6, 2000, Dr. T certified that the claimant reached MMI on July 16, 1999, with a zero percent IR. Dr. T wrote that he had reviewed the information sent to him by the BRO and that he agreed with Dr. M that the claimant's MMI date should be reset to July 16, 1999, but that the claimant's IR remained at zero percent. The claimant said that he only saw Dr. T one time, which was in September 1998.

The claimant said that he was off work from January 7, 1999, to April 2000. He said that in April 2000 he obtained a full-time job as a bus driver.

The claimant contended that Dr. T's revised report of January 2000 should be given presumptive weight; that the great weight of the other medical evidence was contrary to Dr. T's original certification of MMI; that he reached MMI on July 17, 1999, as reported by Dr. M in August 1999 and by Dr. T in the revised report of January 2000; and that he had disability from January 7, 1999, when Dr. M took him off work, until July 16, 1999, when he reached MMI. The carrier contended that Dr. T's original certification of MMI and IR should be given presumptive weight; that the great weight of the other medical evidence was not contrary to Dr. T's original certification of MMI and IR; and that the claimant did not have disability from January 7, 1999, to July 16, 1999.

The claimant appeals the hearing officer's findings that the claimant did not have a significant change in his medical condition after Dr. T certified claimant to be at MMI on September 26, 1998; that the great weight of the other medical evidence did not overcome Dr. T's opinion; and that the claimant was not unable to obtain and retain employment at wages equivalent to his preinjury wage due to his compensable injury of \_\_\_\_\_. The claimant also appeals the hearing officer's conclusions that the claimant's date of MMI is September 26, 1998, and that the claimant did not have disability as a result of his compensable injury of \_\_\_\_\_.

The claimant contends that the hearing officer erred in concluding that the claimant reached MMI on September 26, 1998, because Dr. T's revised report of January 2000 that certified MMI was reached on July 16, 1999, should have been given presumptive weight, and that the hearing officer erred in concluding that the claimant did not have disability from January 7, 1999, to July 16, 1999, because there was no evidence that the claimant was able to obtain and retain employment at his preinjury wage during that time period.

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). An employee is entitled to temporary income benefits (TIBs) if the employee has a disability and has not attained MMI. Section 408.101(a). Section 408.122(c) provides that the report of the designated doctor has presumptive weight and the Commission shall base its determination of whether the employee has reached MMI on the report unless the great weight of the other medical evidence is to the contrary. MMI is defined in Section 401.011(30). The Appeals Panel has held that the need for further medical treatment does not necessarily preclude that attainment of MMI. Texas Workers' Compensation Commission Appeal No. 960728, decided May 29, 1996. The Appeals Panel has held that a designated doctor may amend his report for a proper reason and within a reasonable period of time. Texas Workers' Compensation Commission Appeal No. 970252, decided March 31, 1997. The Appeals Panel has held that a correction or amendment of the designated doctor's first report, especially when the first report was based upon incomplete or erroneous facts, which is done fairly soon after the first report, may be given presumptive weight. Texas Workers' Compensation Commission Appeal No. 92639, decided January 14, 1993. However, the Appeals Panel has held that a hearing officer is not required to accept only the latest designated doctor's report. Texas Workers' Compensation Commission Appeal No. 951349, decided September 28, 1995.

In the instant case, Dr. P, the claimant's initial treating doctor, certified that the claimant reached MMI on June 22, 1998, and Dr. T, the designated doctor, originally certified that the claimant reached MMI on September 26, 1998. Dr. M, the claimant's second treating doctor, reported that the claimant reached MMI on July 16, 1999, and Dr. T revised his report to certify that the claimant reached MMI on July 16, 1999. The claimant did not have any additional surgery after his November 1997 surgery and there is no indication that additional surgery was recommended. Dr. T stated no reason for revising the MMI date other than to state that he agreed with Dr. M regarding the date of MMI. Under these circumstances, we do not conclude that the hearing officer erred in giving presumptive weight to Dr. T's original certification that the claimant reached MMI on September 26, 1998, or that the hearing officer erred in finding that the great weight of the other medical evidence did not overcome the presumptive weight given to that report. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer's decision that the claimant reached MMI on September 26, 1998, as originally reported by Dr. T, the designated doctor, is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

With regard to the disability issue, there is evidence that the claimant was able to work at his regular duties for several months after Dr. P released him to return to work and before he began seeing Dr. M on January 7, 1999. Whether the claimant had disability for the time period which was actually in dispute, January 7, 1999, to July 16, 1999, was a fact question for the hearing officer to determine from the evidence presented. However, it was undisputed that the claimant had disability and was paid TIBs for some unspecified period of time before he was released to return to work by Dr. P and thus the hearing officer's finding and conclusion that the claimant did not have disability as a result of the \_\_\_\_\_, compensable injury is not correct because there is in fact some time period of undisputed disability prior to the time the claimant returned to work for the employer. We reform the hearing officer's finding and conclusion regarding the disability issue to state that the claimant did not have disability from January 7, 1999, to July 16, 1999, which is the time period that was in dispute. As reformed, we conclude that the hearing officer's finding and conclusion on the disability issue are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Although a claimant may have disability after reaching MMI, he would no longer be entitled to TIBs after reaching MMI. Thus, even if the claimant had disability from January 7, 1999, to July 16, 1999, as claimed, he would not be entitled to TIBs for that period because of our affirmance of the hearing officer's decision that the claimant reached MMI on September 26, 1998.

As reformed herein to reflect that the claimant did not have disability from January 7, 1999, to July 16, 1999, the hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Section Manager