

## APPEAL NO. 001850

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 July 18, 2000. The issues involved whether the impairment rating (IR) and date of maximum medical improvement (MMI) assigned to claimant who is the appellant, became final under 28 TEX. ADMIN. CODE §130.102(g) (Rule 130.102(g)), the date that the claimant reached MMI, and the amount of his IR. The motion of the claimant to have the last two issues deleted from consideration was overruled.

The hearing officer held that because there was no ongoing dispute regarding the IR or MMI at the date the first quarter of SIBs eligibility expired, the IR and MMI became final under Rule 130.102(g). He found that the claimant had an IR of 16% and reached MMI on October 22, 1998.

The claimant appeals, and argues that language as to whether a dispute "concerns" IR and MMI is distinct from the meaning given by the Texas Supreme Court to the term "regarding" as used in Rule 130.102. He argues that the IR and MMI are not final. The carrier responds that a disagreement with the conclusions reached by the hearing officer is not itself a basis for reversal where there is evidence to support the hearing officer's findings.

### DECISION

We affirm the hearing officer's decision.

There was only brief testimony taken and the hearing primarily involved the submission of documents and legal argument. The claimant was injured on \_\_\_\_\_. The records indicate a back injury. The claimant was certified by his treating doctor as having reached MMI on October 22, 1998, with a 20% IR. The doctor stated that the IR would have to be apportioned. The IR was disputed, and a designated doctor, Dr. W, subsequently certified that the claimant reached MMI on October 22, 1998, with a 16% IR. Her examination took place on January 13, 1999. Dr. W specifically declined to apportion the IR between the current injury at hand and any prior injuries (one of which had resulted in surgery).

On January 28, 1999, the carrier filed a request for contribution against the IR and for an expedited benefit review conference (BRC). This was denied on February 3, 1999, due to the lack of supporting medical evidence, as indicated, on the bottom of a Carrier's Request for Reduction of Income Benefits Due to Contribution (TWCC-33) which had been date-stamped as received by the Commission February 1, 1999. There was no evidence that impairment income benefits (IIBS) were not paid pursuant to the designated doctor's report. While there is a reference in the Dispute Resolution Information System notes to a "TWCC-33 form" being received in the Texas Workers' Compensation Commission (Commission) field office on February 9, 1999, there was no evidence offered that this

constituted a new request; in fact, the next entry for February 10, 1999, indicates that the inquiry code is "33 Duplicate".

The claimant was informed of the possibility he could be entitled to supplemental income benefits (SIBS) on June 11, 1999. The quarter in question ran from September 24 through December 23, 1999.

The claimant agreed that he was aware of Dr. W's IR at the time he submitted additional information to the Commission. The Commission subsequently found that the claimant was entitled to his first quarter of SIBS on September 20, 1999. The carrier then disputed entitlement. In the meantime, the claimant had back surgery on December 20, 1999. A BRC was apparently scheduled on November 4, 1999, but rescheduled to February 10, 2000. The carrier filed another request for contribution (for the effects of a 1989 injury and surgery) and request for BRC on February 11, 2000.

A few days thereafter, a benefit review officer (BRO) send additional records about the surgery to Dr. W. Dr. W responded, noting that the date of MMI had previously been agreed to, and not disputed, and that while the subsequent surgery would appear to indicate a need for re-evaluation, this would be subject to Commission determination on whether the agreed MMI date would stand. It is not clear whether this proceeding was related to a separate request for review or to the BRC held on SIBs entitlement for the first quarter. The BRO subsequently documented that at a March 1, 2000, BRC, there had been the agreement of the BRO to send the claimant back to Dr. W; however, a subsequent review of the file by the BRO showed that there was no pending dispute over the IR by the end of the first SIBs quarter and the re-evaluation was therefore cancelled.

Rule 130.102(g), effective January 31, 1999 (and not changed by further amendments to the rule in November 1999), states:

Maximum Medical Improvement and Impairment Rating Disputes. If there is no pending dispute regarding the date of maximum medical improvement or the impairment rating prior to the expiration of the first quarter, the date of maximum medical improvement and the impairment rating shall be final and binding. [Emphasis added.]

We agree that the hearing officer's analysis of Rule 130.102(g) is correct. The issues of MMI and IR are not subsumed in a dispute over SIBs entitlement although IR may be expressly challenged as part of a dispute over the first quarter of SIBs only, and before the quarter ends. We have stated that it is the benefit, not the IR, which is adjusted to account for the contributing effect of prior injuries. Texas Workers' Compensation Commission Appeal No. 92610, decided December 30, 1992. Thus, a dispute over contribution (even if one had been proven in this case to be pending) is not a dispute "regarding" the percentage of IR or the date of MMI. We cannot agree with the claimant's argument as to the use of the word "regarding" in the case of Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999). In considering all the evidence in the

record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Judy L. Stephens  
Appeals Judge