

APPEAL NO. 002332

On September 15, 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 respondent (claimant) had not reached maximum medical improvement (MMI) as of the date of the CCH and that the impairment rating (IR) issue was not ripe for adjudication. The appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered that the claimant reached MMI on September 16, 1999, with a two percent IR. The claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury while working as a security guard on _____. Dr. G, the claimant's treating doctor, referred the claimant to Dr. H for an electrodiagnostic study and Dr. H reported in April 1999 that the claimant has severe S1 radiculopathy and may be a surgical candidate. Dr. G wrote on May 24, 1999, that the claimant needs surgery at L5-S1. A July 13, 1999, letter from the Texas Workers' Compensation Commission (Commission) regarding the result of the spinal surgery second opinion process noted that the carrier is liable for spinal surgery related to the compensable injury.

The claimant testified that he was examined by Dr. GA at the carrier's request and that Dr. GA assigned him a zero percent IR. Dr. D, the designated doctor chosen by the Commission, examined the claimant and reported on November 4, 1999, that the claimant reached MMI on September 16, 1999, with a two percent IR for abnormal lumbar range of motion. Dr. D noted that Dr. GA had found the claimant to be at MMI on September 16, 1999. Dr. D listed the medical records he reviewed, which included among others the May 24, 1999, report of Dr. G, which stated that the claimant needs surgery, but he did not list or refer to the Commission's notice regarding the outcome of the spinal surgery second opinion process.

On November 24, 1999, the carrier requested that the Commission tell Dr. D to exclude the lumbar spine from his report because the lumbar spine is not part of the compensable injury.

On April 13, 2000, a CCH was held to resolve the disputed issue of whether the compensable injury of _____, is a producing cause of the claimant's lower back problem, and in a decision dated April 21, 2000, a hearing officer ruled in favor of the claimant on that issue. On May 30, 2000, the Commission notified Dr. D of the approval of the claimant's spinal surgery request. The hearing officer's decision of April 21, 2000, was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 001070, decided June 29, 2000. On July 11, 2000, Dr. D reported that, since the

claimant is scheduled for spinal surgery, he is not at MMI. The claimant testified that he had spinal surgery on July 11, 2000.

The parties stipulated that on _____, the claimant sustained a compensable injury to his low back and left knee and that from February 15, 1999, through the date of the CCH the claimant has been unable to obtain and retain employment at wages equivalent to his preinjury wage because of his compensable back injury. It is noted that the claimant will not reach statutory MMI, which is 104 weeks from the date income benefits began to accrue, until February 2001.

The carrier appeals the hearing officer's findings that Dr. D, the designated doctor, had a proper reason to amend his original report and amended it within a reasonable period of time and that the great weight of medical evidence is not contrary to Dr. D's report of July 11, 2000. The carrier also appeals the hearing officer's conclusions and decision that the claimant was not at MMI as of the date of the CCH; that the IR issue is not ripe for adjudication because the claimant is not at MMI; and that presumptive weight is given to the July 11, 2000, report of Dr. D.

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. Section 408.125(e) provides that, if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. Section 401.011(23) defines impairment as "any anatomic or functional abnormality or loss existing after [MMI] that results from a compensable injury and is reasonably presumed to be permanent." The Appeals Panel has held that a designated doctor may, with proper reason and in a reasonable amount of time, amend the original report of MMI and IR; that the reasons for amendment include, but are not limited to, the need for surgery; and that whether a doctor amended his report for a proper reason and in a reasonable amount of time is a question of fact. Texas Workers' Compensation Commission Appeal No. 992856, decided January 31, 2000.

We conclude that the appealed findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge