

## APPEAL NO. 002541

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 September 26, 2000. The hearing officer determined that: (1) respondent (claimant) had disability from August 8, 1999, to July 8, 2000; and (2) claimant reached maximum medical improvement (MMI) on July 8, 2000. Appellant (carrier) appealed, contending that the hearing officer should have found the treating doctor's MMI date was the correct MMI date and that claimant did not have disability through July 8, 2000, because her doctor had released her to return to work. The file does not contain a response from claimant.

### DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant reached MMI on July 8, 2000. Carrier asserts that it withdrew its dispute of MMI and disputed only the treating doctor's impairment rating (IR), so the date of MMI should be the treating doctor's date of MMI.

Dr. C, claimant's treating doctor, certified that claimant reached MMI on December 8, 1999, with a 16% IR. Carrier filed a Notice of Maximum Medical Improvement/Impairment Rating Dispute (TWCC-32) on February 9, 2000, disputing both the IR and the MMI date. Claimant testified that at the March 21, 2000, benefit review conference (BRC), the parties agreed that a designated doctor would consider both claimant's MMI date and IR. Carrier filed an amended TWCC-32 on March 27, 2000, stating that it disputes the IR only. However, the designated doctor's report states that he was selected to certify both the MMI date and IR. On July 14, 2000, the designated doctor certified that claimant reached MMI on July 8, 2000. An August 8, 2000, BRC agreement states that the parties agreed that claimant's IR is 14%.

It is clear that the treating doctor's first certification of MMI and IR did not become final because of carrier's dispute. The fact that carrier withdrew its dispute of the MMI date did not mean that the MMI date became final on its own. See Texas Workers' Compensation Commission Appeal No. 981988, decided October 8, 1998. Further, it is clear that MMI was an issue in dispute at the BRC and hearing, and the designated doctor was selected to consider both IR and MMI, so the designated doctor's report could be given presumptive weight on both issues. See Appeal No. 981988. We conclude that the hearing officer did not err in according presumptive weight to the designated doctor's report in this case. The determination that claimant reached MMI on July 8, 2000, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends the hearing officer erred in determining that claimant had disability from August 8, 1999, to July 8, 2000. Carrier asserts that claimant was released to full-duty work on November 15, 1999, and that the medical evidence does not support the disability determination. The claimant testified that she was not able to work from August 8, 1999, to July 8, 2000. Claimant said she tried to go back to work a few times during this period, but she was not able to do so. This evidence supports the hearing officer's disability determination in this case. Texas Workers' Compensation Commission Appeal No. 991822, decided October 11, 1999. Carrier also complains that the July 8, 2000, MMI date did not necessarily mean that that was the date that disability ended. MMI is an issue separate from disability. However, claimant asserted that she had disability through July 8, 2000, and her testimony supports this determination. We conclude that the hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge