APPEAL NO. 010177

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 8, 2001, a hearing was held, the hearing officer resolved the disputed issues by deciding that the respondent (claimant) had not reached maximum medical improvement (MMI); that the claimant did not have an impairment rating (IR) because he had not reached MMI; and that the claimant had disability from December 30, 1999, through the date of the hearing. The appellant (carrier) appealed and the claimant responded.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant had not reached MMI. MMI is defined in Section 401.011(30).

Section 408.122(c) provides that the report of the designated doctor shall have presumptive weight and that the Texas Workers' Compensation Commission (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. In Texas Workers' Compensation Commission Appeal No. 000799, decided June 7, 2000, the Appeals Panel noted that it had held in prior decisions that a designated doctor may, with proper reason and in a reasonable amount of time, amend the original report of MMI and IR for various reasons and that one reason is where there were incomplete or erroneous facts when the first report was rendered that are subsequently taken into account in amending the report.

The claimant sustained a compensable injury to his right knee on _____. He had a prior injury to his right knee in 1991 for which he had several surgeries. The claimant was examined by Dr. S at the carrier's request and in a Report of Medical Evaluation (TWCC-69) reported that the claimant reached MMI on December 30, 1999, with a four percent IR for his 1999 injury. Dr. S reexamined the claimant in December 2000 and her opinion on MMI and IR remained the same. Dr. S testified at the hearing.

Dr. M, the designated doctor chosen by the Commission to determine MMI and IR, examined the claimant and reported in a TWCC-69 that the claimant reached MMI on March 6, 2000, with an eight percent IR. Dr. M's narrative report noted a December 30, 1999, date of MMI. In April 1999, Dr. M, without reexamining the claimant, filed another TWCC-69 in which he reported that the claimant reached MMI on March 6, 2000, with a four percent IR. This second report of Dr. M was issued because Dr. M noted an error in his calculation of the IR. In a letter to Dr. M dated July 20, 2000, a benefit review officer advised Dr. M that the parties had raised certain concerns about his reports and that a reexamination of the claimant had been scheduled. Dr. M reexamined the claimant and in a third TWCC-69 dated August 3, 2000, reported that the claimant had not reached MMI. Dr. M noted that at the previous examination the only MRI he had for review was the MRI

for the previous injury (a 1993 MRI) and that at the August 2000 examination he had available for review the March 11, 1999, MRI, and that that MRI showed that the claimant was clearly not at MMI as of the date of the reexamination.

Dr. M's amended opinion on MMI is supported by Dr. T, a referral doctor, who reported in April 2000 that the claimant was not at MMI. Medical reports from other doctors were also in evidence. Several doctors opined that there was not a significant difference between the 1993 MRI and the 1999 MRI.

Conflicting evidence was presented to the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision that the claimant had not reached MMI based on the amended report of the designated doctor is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. We note that at the date of the hearing, January 8, 2001, the claimant would not have reached statutory MMI (104 weeks from the date income benefits began to accrue).

The hearing officer did not err in determining that the claimant did not have an IR because he had not reached MMI.

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. In Texas Workers' Compensation Commission Appeal No. 92517, decided November 12, 1992, the Appeals Panel held that an IR is not assessed until MMI is reached.

The hearing officer did not err in determining that the claimant had disability from December 30, 1999, through the date of the hearing. Disability is defined in Section 401.011(16).

The disability issue was whether the claimant had disability from December 30, 1999, through the present resulting from the injury sustained on _____. Apparently there was no dispute that the claimant had disability prior to December 30, 1999. The claimant testified that neither his treating doctor, Dr. F, nor Dr. T has released him to return to work and that he has not worked since his _____, injury. Dr. T reported in April 1999 that the claimant was unable to return to work, Dr. S noted in December 1999 that the claimant should pursue only sedentary-type work, and Dr. F reported in September 2000 that the claimant cannot return to work until he undergoes pain management and, possibly, knee surgery. The hearing officer's decision on the disability issue is supported by sufficient evidence and is 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:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge