APPEAL NO. 010415

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 January 25, 2001. The hearing officer determined, in accordance with the designated doctor's original certification, that the appellant (claimant) reached maximum medical improvement (MMI) on September 21, 1998, and that his impairment rating (IR) is 7%. On appeal, the claimant urges that the hearing officer's decision be reversed and a new decision rendered that the claimant reached MMI on February 10, 1999, with an IR of 21%. Alternatively, the claimant argues that if the MMI date is determined to be September 21, 1998, than his IR is 16%. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant sustained a compensable back injury, on _____. The claimant's treating doctor, Dr. Sc, certified that the claimant reached MMI on September 21, 1998, and assigned a 16% IR. The claimant was then referred to Dr. C, the designated doctor selected by the Texas Workers' Compensation Commission (Commission), who, on November 12, 1998, certified the same MMI date as Dr. Sc, but assigned a 7% IR.

In May 1999, approximately eight months after the MMI date certified by the designated doctor and approximately three months after the statutory MMI date, which was stipulated to by the parties as being February 10, 1999, the claimant continued to experience back pain and was referred to a surgeon, Dr. Sm. At that time, Dr. Sm discussed surgery with the claimant and ordered a diskogram. After reviewing the diskogram results, Dr. Sm recommended spinal surgery in July 1999, which was subsequently approved through the spinal surgery second opinion process. On December 23, 1999, a L5-S1 decompression and fusion were performed.

In January 2000, the Commission sent a letter to Dr. C, requesting that he review the updated medical records and advise the Commission if the new information would cause him to amend his original MMI certification and IR. In a letter dated February 9, 2000, Dr. C responded that, based upon the new medical information, he would amend both the MMI date and the IR. Dr. C assigned a 10% IR and recommended that the MMI date be determined by the claimant's surgeon. After the claimant had healed from the surgery, he was examined again by Dr. C on January 4, 2001. Based upon that examination and the updated medical records, Dr. C certified that the claimant reached MMI on June 10, 1999, and assigned a 10% IR.

We have long recognized that a designated doctor may amend his report. *See* Texas Workers' Compensation Commission Appeal No. 950861, decided July 12, 1995, and the cases cited therein. However, we have required that the amendment be made for a proper reason and within a reasonable period of time. Texas Workers' Compensation

Commission Appeal No. 971770, decided October 23, 1997; Texas Workers' Compensation Commission Appeal No. 94492, decided June 8, 1994. In Texas Workers' Compensation Commission Appeal No. 941168, decided October 14, 1994, we stated that our cases concerning amendments of a certification of MMI and IR had not established "any particular outside limit on the amount of time that may pass between a certification of MMI or IR and an amendment of that certification." However, a review of those cases demonstrates that we have attempted to establish parameters and guidelines for determining whether an amendment was made within a reasonable time. In cases such as this one, where surgery is performed after the date of statutory MMI, we have considered whether surgery was actively under consideration at the time of the designated doctor's initial examination and/or at the time of statutory MMI. Texas Workers' Compensation Commission Appeal No. 980985, decided June 26, 1998; Appeal No. 950861, *supra*; and Texas Workers' Compensation Commission Appeal No. 941243, decided October 26, 1994. In this case, the claimant's spinal surgery was not given consideration until May 1999, and the spinal surgery second opinion process was not initiated until July 1999. The date of the designated doctor's first examination of the claimant was October 29, 1998, and the designated doctor certified that the claimant reached MMI on September 21, 1998. Thus, the surgery was not under active consideration at the time of Dr. C's original certified MMI date, nor at the time the claimant would have otherwise reached statutory MMI on February 10, 1999.

In permitting amendment of a designated doctor's certification, we have recognized that a properly revised IR should not be sacrificed solely for the expediency of finality. Appeal No. 94492, *supra*. However, decisions that permit an amendment of an IR after statutory MMI must be balanced against the goal of finality clearly embodied in the MMI and IR provisions of the 1989 Act, particularly the statutory MMI provision of Section 401.011(30)(B). Because surgery was not under active consideration at either the time of the designated doctor's initial certification of MMI or at the time the claimant otherwise would have reached statutory MMI, the hearing officer did not err in determining amendment to the designated doctor's report was not made within a reasonable time.

The hearing officer also did not err in determining that the great weight of the other medical evidence is not contrary to the initial report of the designated doctor. The difference between the designated doctor’s initial certification and that of the claimant’s treating doctor is attributable to the fact that while the treating doctor included range of motion (ROM) in his rating, the designated doctor did not. The treating doctor’s inclusion of ROM in rating the claimant's injury does not rise to the level of the great weight of medical evidence contrary to the designated doctor’s report. In addition, the treating doctor's opinion as to the date the claimant reached MMI does not constitute the great weight of other medical evidence contrary to the designated doctor's opinion. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor’s initial report under Sections 408.122(c) and 408.125(e) and in determining that the claimant reached MMI on September 21, 1998, with an IR of 7%.

The decision and order of the hearing officer are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge