

## APPEAL NO. 010832

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 March 22, 2001, with (hearing officer) presiding. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on June 19, 1999, with a 24% impairment rating (IR) as was originally certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed the hearing officer's decision on the issue of the date of MMI. The respondent (self-insured) responded. There is no appeal of the hearing officer's decision that the claimant has a 24% IR.

### DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant reached MMI on June 19, 1999. 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 that report unless the great weight of the other medical evidence is to the contrary. MMI is defined in Section 401.011(30).

The claimant testified that on \_\_\_\_\_, she was performing her job duties cleaning the inside of a bus when she hit her head on the doorframe of the back door. The parties stipulated that the claimant sustained a compensable cervical and lumbar injury on \_\_\_\_\_. The claimant said that she has not had surgery for her injury, that her condition has not gotten any better since her injury, and that she has not worked since her injury.

Dr. L examined the claimant at the carrier's request on November 19, 1998, and he certified that the claimant reached MMI on November 19, 1998, with a four percent IR.

The Commission chose Dr. K as the designated doctor and he examined the claimant on June 19, 1999, and certified that the claimant reached MMI on June 19, 1999, with a 24% IR. Dr. K noted that the claimant had had physical therapy and chiropractic treatment, that the claimant is a poor candidate for surgical intervention, and that the claimant would continue to need "medical management" for coping with her "persistent medical problems." In response to a Commission inquiry for clarification, Dr. K wrote in December 1999 that he felt that the claimant's condition had stabilized at the time of his examination of the claimant; that he saw no reason to change the claimant's MMI date and IR; and that if the claimant decides to have "procedure(s)" done, then she may not have been at MMI and a reconsideration may be requested. Dr. K noted that the claimant told him that she had not been allowed to have "treatments" that her doctors had ordered; however, there is nothing in the medical reports in evidence that suggested that the claimant was denied treatment.

In August 2000, the Commission sent additional medical reports to Dr. K, and Dr. K wrote that, since the claimant had decided to pursue spinal injections, she was not at MMI, no IR could be assigned, and she would need to be reexamined when she completed her medical treatment. Dr. K reexamined the claimant on November 18, 2000, and certified that the claimant reached MMI on June 11, 2000, which he considered to be the date of "statutory MMI" (the expiration of 104 weeks from the date income benefits begin to accrue), with a 24% IR. Dr. K noted that after his first evaluation of the claimant, the claimant had elected to proceed with epidural steroid injections, facet blocks, trigger point injections, and radiofrequency nerve ablations. Dr. K also noted that when the claimant saw Dr. S in October 2000, the claimant's pain had returned, the claimant was recommended for pain management, and surgery had been suggested if the claimant failed to respond to less invasive procedures. No surgery recommendation is in evidence.

A designated doctor may amend a report for a proper reason and within a reasonable amount of time. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000. A proper reason and reasonable time depend on the circumstances of individual cases. Appeal No. 000138. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented.

With regard to MMI, the hearing officer found that the claimant's medical condition continued to remain stable since June 1999 (when Dr. K initially certified MMI); that the great weight of the medical evidence is not contrary to Dr. K's initial report of MMI; and that there is insufficient evidence that Dr. K's amended report was done for a proper purpose or in a reasonable amount of time. The hearing officer concluded that the claimant reached MMI on June 19, 1999, as was initially certified by Dr. K. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Judy L. Barnes  
Appeals Judge

---

Phillip F. O'Neill  
Appeals Judge