APPEAL NO. 011005
FILED JUNE 21, 2001

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 April 18, 2001. The hearing officer determined that respondent (claimant) reached maximum medical improvement (MMI) on January 18, 2001, with an impairment rating (IR) of 21%, as certified by the designated doctor in his third report dated February 19, 2001. The hearing officer also determined that the Texas Workers' Compensation Commission (Commission) had jurisdiction over the MMI and IR issues and that claimant had disability from October 24, 2000, through January 18, 2001. Appellant self-insured ("carrier" herein) appealed these determinations on sufficiency grounds. Carrier also asserted that the issue of MMI and IR had been previously resolved by stipulation in a prior hearing regarding extent of injury. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

It was undisputed that claimant sustained a right hand and elbow injury on _____. In a prior hearing in case number 1, the same hearing officer determined that claimant's injury extends to the diagnosis of thoracic outlet syndrome. This decision was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 002604, decided December 19, 2000. It was acknowledged that the issue regarding extent of injury is on appeal in the district court. In the hearing officer's decision in case number 1, the parties stipulated that "the designated doctor herein has certified that the claimant reached [MMI] on July 8, 1999, with a 1% [IR]."

On August 30, 1999, the designated doctor, Dr. T, certified in his first report that claimant reached MMI on July 8, 1999, with a 1% IR. The designated doctor indicated that he examined claimant's right upper extremity and the 1% impairment was for loss of range of motion (ROM). After the October 2000 decision and order regarding extent of injury in case number 1, the designated doctor reexamined claimant at the request of the Commission. In a second report dated January 22, 2001, the designated doctor determined that claimant had not yet reached MMI. In third report dated February 19, 2001, the designated doctor stated that he had been informed that claimant had reached statutory MMI, and he then certified that claimant reached MMI on January 18, 2001, with an IR of 21%. This IR included impairment for the thoracic outlet syndrome but the 21% impairment was for loss of ROM in the right upper extremity. In his report of August 30, 1999, the designated doctor had found impairment for loss of ROM of only 1%.

Carrier contends the hearing officer erred in determining that claimant reached MMI on January 18, 2001, with an IR of 21%. Carrier asserts that, in a prior hearing, the issue of MMI and IR were resolved by stipulation, so the Commission did not have jurisdiction

to consider the MMI and IR issues. However, the fact that the parties stipulated that the designated doctor made a certain certification in a Report of Medical Evaluation (TWCC-69) does not mean that they stipulated to the date of MMI and the IR. Stipulations regarding the issues of the MMI date and IR were not made in case number 1. *See* Texas Workers' Compensation Commission Appeal No. 983043, decided February 16, 1999. We reject carrier's contention.

Carrier contends the hearing officer erred in determining that claimant reached MMI on January 18, 2001, with an IR of 21%. Carrier's assertion on appeal is that "there was no need to have claimant reexamined" by the designated doctor because he had already examined her. Carrier asserts that the "shoulder region that was causing the alleged complaints by [claimant] at the time of the examination" had already been examined by the designated doctor on August 30, 1999. Carrier also states that two other doctors did not indicate that claimant had "any problems relative to the alleged thoracic outlet syndrome."

We would first note that, while there is an appeal pending in the district court, the Appeals Panel decision is binding and the thoracic outlet syndrome is considered a part of the compensable injury. *See* Section 410.205(b). We now address the remaining contention regarding whether claimant needed to be reexamined. Again, in October 2000, it was determined in case number 1, that claimant's injury extends to the diagnosis of thoracic outlet syndrome. Because of this, the Commission referred claimant to the designated doctor for reexamination. The designated doctor noted in a January 2001 report that it had been determined after his certification of the 1% IR that the injury included thoracic outlet syndrome. The designated doctor stated that he examined claimant and that she had not yet reached MMI. The designated doctor stated that, "prior to this, she was evaluated only for the previous injury as compensable to her right wrist and right elbow." Reexamination for the designated doctor to consider all of the injury is a proper reason to reexamine a claimant. *See* Texas Workers' Compensation Commission Appeal No. 941600, decided January 12, 1995. Having considered and addressed each of carrier's assertions on appeal and finding no reversible error, we conclude that the hearing officer's determination that claimant reached MMI on January 18, 2001, with an IR of 21% 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 next contends that the hearing officer erred in determining that claimant had disability from October 24, 2000, through January 18, 2001. This determination is supported by claimant's testimony. We have reviewed the complained-of disability determination and conclude that this issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge