APPEAL NO. 011063
FILED JUNE 25, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This is an appeal of the decision of hearing officer (hearing officer), on remand, of the matter of whether the claimant reached maximum medical improvement (MMI) and the determination of his impairment rating (IR). After reexamination by the designated doctor, the hearing officer held that the claimant reached MMI on the statutory date of June 23, 1997, with an 18% IR, as certified by the designated doctor, whose opinion was not contrary to the great weight of the other medical evidence.

The carrier has appealed and asks the Appeals Panel to reconsider its previous affirmance of the hearing officer's finding on date of statutory MMI. The carrier further states that a new designated doctor should have been appointed when the current one was not immediately responsive to the hearing officer's inquiries. The carrier does not assert that the certification of the designated doctor as to statutory MMI and 18% IR is against the great weight of the contrary medical evidence; it asks that this doctor's first IR of 10% be reinstated due to procedural arguments cited above. The claimant responds by asking for affirmance.

DECISION

Affirmed.

The facts were more fully set forth in Texas Workers Compensation Commission Appeal No. 002671, decided January 8, 2001. The appeal raised on the remand seeks to have the certification of MMI and IR set aside due solely because of reevaluation by the particular designated doctor appointed in this case.

Initially, we would note that we will not reconsider our previous decision affirming the hearing officer's determination of the date of statutory MMI. We previously discussed the carrier's point about the counting of weekends as part of a period of disability, and we generally agreed that weekends within a period of time that a worker had disability are not to be deducted from the applicable time period. However, we noted that under the particular facts of this case, the hearing officer did not err in her findings in not counting one weekend involved, and we articulated the basis for not doing it in this case. We cannot agree, as the carrier argues, that the decision in this particular case puts carriers in an "untenable" position for computing periods of disability.

In this case, after the designated doctor rendered his opinion, in which he appeared to assess a date of medical MMI in 2001 although instructed not to use a date beyond the date of statutory MMI (which was wrongly stated on the Report of Medical Evaluation (TWCC-69) form), the hearing officer wrote for further clarification. The designated doctor

did not respond to the first two communications but did to the third, and stated that the claimant did not reach MMI earlier than the statutory date of June 23, 1999.

We do not agree that the hearing officer should have appointed a second designated doctor when he did not initially respond to a brief request for clarification. Nothing in the letters from the hearing officer "coached" the designated doctor toward a particular answer, a point which is conceded by the carrier. The only consequence of the doctor's delayed answer was a delay in the remand hearing which would have resulted if a second designated doctor been appointed. The hearing officer was faced with weighing the reports of the designated doctor and evaluating whether the great weight of other medical evidence was contrary to either report. Her determination that the great weight was not against the second report of the designated doctor has not been appealed. The fact that a party feels aggrieved by the results certified by a designated doctor does not alone comprise a sufficient basis for appointment of a second designated doctor or adoption of an earlier report.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge