

APPEAL NO. 011259  
FILED JULY 16, 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 May 21, 2001. The hearing officer resolved the disputed issues by determining that the respondent's (claimant) date of maximum medical improvement (MMI) is September 5, 2000, and her impairment rating (IR) is 22%. The appellant (self-insured) has appealed those determinations, taking the position that the first certification of MMI and IR from the designated doctor should have been accepted, rather than the second certification. The claimant asks in her response that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable shoulder injury on \_\_\_\_\_. Her first surgery was performed on October 27, 1998. After the claimant's treating doctor certified that the claimant was at MMI on August 26, 1999, with a 22% IR, the self-insured disputed the IR and asked for the appointment of a designated doctor. The Texas Workers' Compensation Commission-selected designated doctor, Dr. C, performed an evaluation of the claimant on October 30, 1999. Dr. C was asked to assess an IR only, with an assumed MMI date of August 26, 1999; she did so, and assigned an IR of 13%. According to Dispute Resolution Information System (DRIS) notes admitted into evidence as Claimant's Exhibit No. 1, the claimant disputed the MMI date and IR on December 8, 1999. The basis for the claimant's dispute was a recent recommendation for further surgery, with both her treating doctor and her surgeon in agreement that the claimant was not at MMI. The DRIS notes further reflect that a benefit review officer suggested that the claimant wait until after her surgery and subsequent improvement to submit medical records to the designated doctor, and the claimant agreed to do so. The second surgery was performed on February 11, 2000. According to the DRIS notes, the claimant requested on April 3, 2000, that the designated doctor receive her records. The medical records were submitted and sent to Dr. C on June 28, 2000. Dr. C advised on August 25, 2000, that MMI and IR would need to be adjusted in light of the new records. Dr. C evaluated the claimant again on October 3, 2000, certifying an MMI date of September 5, 2000 [statutory MMI date], and an IR of 22%.

The hearing officer found that Dr. C's amendment of the MMI date and IR was made within a reasonable time and for a proper purpose. He found that her certification of MMI and IR were not contrary to the great weight of the other medical evidence. We have reviewed the issues raised by the self-insured in its appeal and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are 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).

We affirm the decision and order of the hearing officer.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge