

APPEAL NO. 011261
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 February 26, 2001, and May 21, 2001. The hearing officer determined that: (1) the appellant's (claimant) date of maximum medical improvement (MMI) is June 23, 1997; (2) the claimant's impairment rating (IR) is 10%; and (3) the claimant is not entitled to supplemental income benefits (SIBs) for the fourth quarter. The claimant appeals these determinations on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

MMI/IR

The hearing officer did not err in determining that the claimant reached MMI on June 23, 1997, with an IR of 10%, consistent with the Texas Workers' Compensation Commission (Commission)-appointed designated doctor's initial certification. Sections 408.122(c) and 408.125(e) of the 1989 Act provide that the report of a Commission-appointed designated doctor determining the date of MMI and the claimant's IR shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. We have held that a "great weight" determination requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including the treating doctor's report, is accorded the special presumptive status; and that the designated doctor's report should not be rejected absent a substantial basis for doing so. Texas Workers' Compensation Commission Appeal No. 960897, decided June 28, 1996.

The claimant asserts that presumptive weight should be given to the designated doctor's amended MMI and IR certifications, which take into account the claimant's second spinal surgery. We have said that it is inappropriate for a designated doctor to amend a certification, in consideration of subsequent surgery, if the surgery was not under active consideration at the time of statutory MMI. Texas Workers' Compensation Commission Appeal No. 002929-S, decided January 23, 2001. It is undisputed, in this case, that the claimant's second spinal surgery was not under active consideration at the time of statutory MMI--April 1, 1998. Under the circumstances, we cannot conclude that the hearing officer erred in giving presumptive weight to the designated doctor's initial certification of MMI and IR. Additionally, the hearing officer's determinations with regard to the claimant's MMI and IR 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 (Tex. 1986).

Fourth Quarter SIBs

The hearing officer did not err in determining that the claimant was not entitled to

fourth quarter SIBs. Section 408.142(a)(1) provides that an employee is entitled to SIBs if, on the expiration of the impairment income benefit period, the employee has an IR of 15% or more from the compensable injury. Given our affirmance of the hearing officer's IR determination, we likewise affirm the hearing officer's determination that the claimant is not entitled to fourth quarter SIBs.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge