

APPEAL NO. 011394
FILED JULY 30, 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 24, 2001. Concerning the issues before her, the hearing officer determined that appellant (claimant) had a maximum medical improvement (MMI) date of February 3, 2000, with a seven percent (7%) impairment rating (IR), pursuant to the report of the designated doctor. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds and urges affirmance of the hearing officer's decision and order in all respects.

DECISION

We reverse and remand.

The parties stipulated that claimant sustained a compensable neck injury on _____. Claimant was evaluated by the designated doctor, Dr. A, on May 11, 2000. Dr. A certified that claimant reached MMI on February 3, 2000, with a seven percent IR, all of which was for specific disorders. The designated doctor stated that he tested claimant twice for range of motion (ROM) loss, but did not include any impairment for loss of ROM because claimant voluntarily restricted his motion. Claimant testified that he underwent cervical surgery on April 18, 2001, after the designated doctor had examined him and before statutory MMI. The issue of reexamination after surgery was raised at the hearing. There is no second report from the designated doctor or any letter in the record indicating that the designated doctor was told about the surgery or asked to comment about it. The Appeals Panel has observed in numerous cases that pending or scheduled surgery may require a remand to obtain the designated doctor's opinion on whether and how that surgery would affect his or her opinion as to MMI and IR. See Texas Workers' Compensation Commission Appeal No. 94288, decided April 26, 1994. Given the fact that a surgery may change ROM measurements as well as neurological findings, we must remand this case to the hearing officer. The hearing officer should send the surgical reports to the designated doctor and ask the designated doctor to conduct repeat ROM testing. The hearing officer should also ask the designated doctor about any changes to his report due to the fact that claimant had surgery.

We reverse the hearing officer's determinations regarding MMI and IR and remand this case for further action consistent with this decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers'

Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge