APPEAL NO. 011419
FILED AUGUST 8, 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 (CCH) was held on June 5, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) had not reached maximum medical improvement (MMI); that the date of MMI is not ripe for adjudication; and that the claimant's impairment rating (IR) cannot be determined. The appellant (carrier) appeals, asserting that the Appeals Panel should reverse and render a decision that the claimant reached MMI on December 5, 2000, with a zero percent IR as certified by the designated doctor. In addition, the carrier asserts that the hearing officer erred in finding that the designated doctor's report was not made according to the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), and that the hearing officer erred in disallowing further discovery. The claimant responds and urges that the hearing officer be affirmed in all respects.

DECISION

Affirmed, as modified.

The claimant sustained a compensable injury on _____, and her initial treating doctor certified that she reached MMI October 11, 2000, with a zero percent IR. The claimant disputed the treating doctor's certification. A designated doctor was appointed by the Texas Workers' Compensation Commission (Commission), and he certified that the claimant reached MMI on December 5, 2000, with a zero percent IR. At the time the designated doctor made his certification, the claimant's spinal surgery recommendation process had already been initiated. The claimant was ultimately approved for spinal surgery and had surgery on February 20, 2001. The claimant's current treating doctor has repeatedly written that the claimant has not reached MMI.

The Commission advised the designated doctor that the claimant had spinal surgery, and requested that he reevaluate the claimant. The designated doctor responded that he was of the opinion that spinal surgery was not indicated for the claimant and that there should be no change in the claimant's MMI/IR certification.

The hearing officer did not err in determining that the claimant had not reached MMI. The Commission's approval of spinal surgery for the claimant was sufficient to support the hearing officer's decision that the great weight of the other medical evidence was sufficient to overcome the designated doctor's certification of MMI as of December 5, 2000. Texas Workers' Compensation Commission Appeal No. 000832, decided June 2, 2000.

The hearing officer did not err in denying the carrier's request for discovery, because the carrier failed to request further discovery or a continuance at the CCH; nor did the carrier object on the record at the CCH to a previous denial of its discovery request.

The hearing officer did not err in determining that the carrier's questions about the claimant's prior back injuries were not relevant.

The hearing officer erred in determining that the designated doctor's "rating was not made in accordance with the [AMA] Guides." No evidence was introduced at the CCH showing that the designated doctor did not properly follow the AMA Guides when assigning the zero percent IR. Accordingly, we modify the decision by striking Finding of Fact No. 5 from the decision.

As modified, 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 hearing officer's decision and order, as modified.

Robert E. Lang
Appeals Panel
Manager/Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge