

APPEAL NO. 011618  
FILED AUGUST 21, 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 June 12, 2001, with the record closing on June 12, 2001. The hearing officer determined that the appellant's (claimant) impairment rating (IR) was 9% as assessed by the designated doctor, Dr. G, and that report is entitled to presumptive weight.

The claimant appeals, asserting that she had subsequent surgery after Dr. G's first assessment, that Dr. G's second report was done within a reasonable time, that she had not reached (clinical) maximum medical improvement (MMI), and that Dr. G's amended report assessing a 21% IR should be adopted. The claimant submitted a medical note dated June 8, 2001, commenting on a September 21, 1999, report with her appeal. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant had been employed by a hospital and sustained a compensable injury from a fall on \_\_\_\_\_. The parties stipulated that the claimant sustained a compensable left elbow, right shoulder, and cervical injury; that the claimant reached "statutory [MMI]" (Section 401.011(30)(B)) on May 14, 1998; and that Dr. G was the Texas Workers' Compensation Commission (Commission)-appointed designated doctor.

Dr. H is the claimant's treating doctor and performed left elbow surgery in 1996 and a right shoulder rotator cuff repair in September 1997. Dr. A, a chiropractor, initially certified MMI on November 6, 1996, which he later rescinded.

Dr. G examined the claimant on May 14, 1998, and certified MMI on that date (the parties agreed that the statutory MMI date was also May 14, 1998), with a 9% IR. The IR was assessed for 5% impairment for cervical loss of range of motion (ROM) and 4% loss of ROM of the right shoulder. Neurosensory exams were normal. No IR was given from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. The claimant was not being considered for any additional surgery in May 1998. Dr. H continued to treat the claimant and assessed her at (clinical) MMI in July 1998.

The claimant had continued to have subjective right shoulder complaints. In dispute is whether the claimant reinjured her neck in September 1999. The claimant had additional right shoulder surgery on May 3, 2000, where "rotator cuff debridement was performed." In a note dated May 5, 2000, Dr. H commented "I told her we could not repair the rotator cuff, so she will

always be a little weak. By debriding the rotator cuff attenuated edges and removing the old sutures, . . . this will give her some pain relief.”

The claimant subsequently contacted the Commission, which sent additional medical records to Dr. G and asked if those documents changed his mind. Dr. G replied by letter of December 3, 2000, noting it had been two and one-half years since his assessment and asked to reexamine the claimant in view of the new information. In a report dated February 11, 2001, Dr. G certified MMI and assessed a 21% IR based on 6% impairment for cervical ROM, 6% impairment from Table 49, Section (II)(C), 11% impairment for right shoulder ROM, 1% impairment for left elbow ROM, and 6% impairment for “other.” Dr. G noted “HNPs of the cervical spine at C3/4 and C4/5. No surgery is anticipated to the cervical spine.”

The Appeals Panel has held that a designated doctor may amend his report for a proper reason within a reasonable time (Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000). The burden of proof is on the party who advocates that the amendment was made for a proper reason within a reasonable time, and that depends on the circumstances of the individual case. Subsequent surgery alone may not be a sufficient basis for a designated doctor to amend a report. Whether surgery was “under active consideration” at the time of statutory MMI is essential to the consideration of whether the designated doctor amended the report within a reasonable time and for a proper purpose. Texas Workers' Compensation Commission Appeal No. 002929-S, decided January 23, 2001. In this case, statutory MMI was on May 14, 1998, and the claimant was clearly not under consideration for any additional surgery at that time. The hearing officer found Dr. G's amended report of February 6, 2001, “was an unreasonable amount of time” after his initial assessment. The hearing officer's decision is supported by sufficient evidence.

Regarding the additional medical note dated June 6, 2001, attached to the claimant's appeal, we note that it was dated six days prior to the CCH and commented on a September 1999 report. We do not normally consider evidence submitted for the first time on appeal and we do not find that note to meet the requirements set out in Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ) to warrant a remand.

The hearing officer's decision is 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).

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge