

APPEAL NO. 011840-S
FILED SEPTEMBER 19, 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 July 10, 2001. The hearing officer determined that the respondent (claimant) "reached statutory maximum medical improvement [MMI] on April 27, 2001, by operation of law." The appellant (carrier) has appealed, arguing that the Texas Workers' Compensation Commission (Commission) order dated November 29, 2000, which established the MMI date as February 10, 2001, became final when it was not disputed within ten days of the time that the order was issued. The claimant did not respond to the appeal.

DECISION

Affirmed.

The claimant was injured at work on _____, and missed just a few days of work at that time. By late April 1999, the claimant again missed work due to his compensable injury; workers' compensation benefits began to accrue on his eighth day of disability, May 2, 1999. See Section 408.082(b), Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.7 (Rule 124.7), and Texas Workers' Compensation Commission Appeal No. 950462, decided May 11, 1995. The claimant eventually had spinal surgery, and had not returned to work as of the date of the CCH. Section 401.011 provides:

(30) [MMI] means the earlier of:

- (A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
- (B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or
- (C) the date determined as provided by Section 408.104.

The controversy in this case arises because the claimant had spinal surgery on September 13, 2000, and was believed to be close to statutory MMI. The claimant was advised that under Section 408.104(a), he could request an extension of the date of MMI due to his spinal surgery. According to Dispute Resolution Information System (DRIS) notes, of which the hearing officer took official notice, Commission personnel assisting the claimant were under the impression that the claimant would reach statutory MMI on October 25, 2000. Based on that erroneous impression, Commission personnel assisted the claimant in preparing an extension request, which was ostensibly submitted within the time frame

permitted by Rule 126.11(e); that is, no earlier than 12 weeks before the expiration of 104 weeks after the date income benefits begin to accrue and no later than 110 weeks from the date income benefits begin to accrue. Acting on this erroneously submitted request for extension, the Commission issued an order on November 29, 2000, approving a new MMI date of February 10, 2001. The Commission letter contained advice that a party wishing to dispute this extension could request a benefit review conference "within 10 days after the date the parties received the extension order." There was no such request submitted. The claimant realized later that a mistake had been made in determining the 104-week period from his date of injury rather than from the date that benefits accrued, and notified the Commission. The Commission agreed with the claimant and, by letter dated April 24, 2001, corrected the statutory MMI date to be April 28, 2001.

The carrier takes the position that the November 29, 2000, order of the Commission established the MMI date because the claimant was given 10 days to dispute that date by the terms of the order and he did not do so. As noted above, there were errors made in the processing of this case. The claimant was erroneously thought to be at statutory MMI in October 2000, when the question of an extension of MMI arose after his September 2000 spinal surgery. He was required to ask for an extension of MMI when it was unnecessary that it be extended. The claimant's situation with regard to when his benefits began is not rare, but it is certainly not the norm. A simple mistake was made in determining the statutory MMI date because income benefits did not accrue to the claimant immediately after his date of injury. It would be error to affirm the position that an erroneous "extended" date of MMI established under Section 408.104(a) would take precedence, and would actually result in an MMI date earlier than the statutorily mandated date 104 weeks after the date on which income benefits began to accrue.

The DRIS notes reflect that the designated doctor certified that the claimant reached MMI on April 28, 2001. The hearing officer has correctly applied the law in this case in determining that the correct date of statutory MMI is April 27, 2001.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. T. CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge