APPEAL NO. 012009
FILED OCTOBER 11, 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 August 6, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) has not reached maximum medical improvement (MMI) as of the date of the hearing and that the issue of his impairment rating (IR) is not ripe. In its appeal, the appellant (carrier) asserts error in those determinations and requests that we render a new decision that the claimant reached MMI on January 11, 2000, with an IR of six percent, as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in his initial report. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____. The claimant testified that following his injury he continued to work in a light-duty position with the employer until August 1, 2000. At that time, the claimant began treating with Dr. M, who took the claimant off work. Apparently, the claimant was certified to have reached MMI and was assigned an IR by a doctor selected by the employer. The claimant disputed that rating, and Dr. L was selected by the Commission to serve as the designated doctor.

Dr. L certified that the claimant reached MMI on January 11, 2000, with an IR of six percent. In August 2000, Dr. M performed a provocative discogram on the claimant's lumbar spine. Based upon the results of that testing and the post-discogram CT scan, Dr. M recommended that the claimant undergo intradiskal electrothermal treatment (IDET). In a letter dated November 9, 2000, the Commission advised the claimant of the results of the spinal surgery second opinion process. Specifically, the letter advised the claimant that the carrier was liable for the costs of the IDET procedure because it either did not respond or failed to timely request a second-opinion appointment.

On February 16, 2001, Dr. L reexamined the claimant after having been advised that the claimant was to undergo the IDET procedure. In his report, Dr. L stated that he did not "anticipate any significant improvement from the IDET procedure." Nevertheless, Dr. L further stated, "[i]n view of the data contained in the additional medical records, I will rescind the 6% [IR] and MMI date. I would recommend a new [IR] in six months." Dr. L also completed a Report of Medical Evaluation (TWCC-69) dated February 23, 2001, in which he certified that the claimant had not yet reached MMI. On February 23, 2001, the claimant underwent the IDET procedure. The claimant testified that his condition has improved since that procedure, and Dr. M's records also reflect improvement in the claimant's condition following the IDET treatment.

The hearing officer did not err in giving presumptive weight to Dr. L's amended report and in determining that the claimant has not yet reached MMI. We have long recognized that a designated doctor may amend his report. *See* Texas Workers' Compensation Commission Appeal No. 950861, decided July 12, 1995, and the cases cited therein. However, we have required that the amendment be made for a proper reason and within a reasonable period of time. Texas Workers' Compensation Commission Appeal No. 971770, decided October 23, 1997; Texas Workers' Compensation Commission Appeal No. 94492, decided June 8, 1994. In this instance, Dr. L rescinded his prior certification of MMI and IR based upon the fact that the claimant was going to undergo IDET treatment. The hearing officer determined that Dr. L had a proper reason for amending his certification of MMI and IR because the claimant was going to undergo further invasive treatment, and her determination in that regard is well-supported by our prior decisions. The carrier contends that the amendment was not made within a reasonable time because the IDET treatment was not under "active consideration" at the time Dr. L originally certified MMI. We find no merit in this assertion. The significance of whether the procedure was under active consideration would come into play in this case, if the claimant had reached statutory MMI at the time the IDET treatment was performed. However, the claimant did not begin missing time from work until August 2000. Thus, he has not yet reached MMI pursuant to Section 401.011(30)(B), at the time Dr. L rescinded his certification of MMI and IR or when he underwent the IDET treatment and, as such, Dr. L could properly consider the effects of that treatment on his certification of MMI and IR. The hearing officer did not err in determining that Dr. L's amendment of his certification of MMI and IR was made within a reasonable time and for a proper purpose. Thus, she likewise did not err in giving presumptive weight to Dr. L's amended report and in determining that the claimant has not yet reached MMI.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge