

APPEAL NO. 020105  
FILED FEBRUARY 13, 2002

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 December 17, 2001. The hearing officer determined that (1) the appellant (claimant) reached maximum medical improvement (MMI) on December 7, 2000, with a seven percent impairment rating (IR) as initially certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor; and (2) the claimant had disability from October 19, 2000, through the date of the hearing. The claimant appeals the MMI/IR certification, essentially asserting that the designated doctor amended his initial report within a reasonable time and for a proper purpose and that the hearing officer's determination is contrary to the great weight of the evidence. The claimant also appeals the hearing officer's injury determination, requesting that disability be found to exist beyond the date of the hearing to some indefinite time in the future. The respondent (carrier) urges affirmance.

DECISION

Affirmed in part, reversed and remanded in part.

**MMI/IR**

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, in the form of bilateral carpal tunnel syndrome. The claimant received conservative treatment for her condition, although surgery was discussed. On October 19, 2000, the claimant was evaluated by an independent medical examination doctor, who certified her at MMI on October 19, 2000, with a zero percent IR. The claimant was subsequently evaluated by a Commission-appointed designated doctor, who certified her at MMI on December 7, 2000, with a seven percent IR. On March 30, 2001, the claimant underwent left carpal tunnel and left trigger thumb release surgeries. Similar surgeries were recommended for the claimant's right upper extremity after allowing adequate time for the left upper extremity to heal. On July 20, 2001, in response to a Commission inquiry regarding the impact of surgery on the claimant's MMI/IR, the designated doctor reevaluated the claimant and noted that the claimant had recovered full use of her left hand following surgery but continued to experience numbness and tingling in the right upper extremity. The designated doctor wrote:

The [claimant] has recovered well with regard to the surgery on her left hand for carpal tunnel syndrome. She presents with carpal tunnel symptoms involving her right hand, which previous nerve conduction studies indicate. Additional follow up in surgery has been recommended and it may be prudent to have a neurological evaluation to the left extremity addressing her

present clinical findings and symptoms. The [claimant] has not achieved [MMI] as of this date.

The designated doctor completed a Report of Medical Evaluation (TWCC-69) certifying that the claimant had not reached MMI. The hearing officer found that the designated doctor's amended report was not made within a reasonable time and for a proper purpose and gave presumptive weight to the designated doctor's first MMI/IR certification.

At the time of the hearing, there was no Commission rule which specifically discussed a designated doctor's amendment of IR. In the absence of a rule, the hearing officer obviously applied the precedent which was previously developed by the Appeals Panel with regard to this issue. Since that time, the Commission adopted Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), effective January 2, 2002. Rule 130.6(i) provides that a designated doctor's response to any Commission request for clarification is considered to have presumptive weight, as it is part of the designated doctor's opinion. In Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, we held that Rule 130.6(i) is effective immediately and "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." Accordingly, we reverse and remand this issue to the hearing officer with directions that he consider the designated doctor's amended report and give it presumptive weight as required by Rule 130.6(i). To be clear, the hearing officer must determine whether the great weight of the other medical evidence contradicts the designated doctor's amended report that the claimant has not reached MMI with regard to the compensable injury, considering the presumptive weight afforded to that report under new Rule 130.6(i); and, if so, the hearing officer may seek further clarification from the designated doctor, adopt another MMI/IR certification of the designated doctor, or adopt another MMI/IR certification from another doctor.

## **DISABILITY**

The hearing officer did not err in determining that the claimant had disability from October 19, 2000, through the date of the hearing. As stated above, the claimant requests that disability be found to exist beyond the date of the hearing to some indefinite time in the future. In view of the evidence presented, it was appropriate for the hearing officer to find disability through the date of the hearing. We note, however, that the hearing officer's decision in this case would not preclude the claimant from raising the issue of disability, in a future proceeding, beyond the period found by the hearing officer in this case. The claimant's eligibility for temporary income benefits would continue as long as there is disability and MMI has not been reached.

The decision and order of the hearing officer are affirmed with regard to disability and reversed and remanded with regard to MMI/IR.

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 Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the carrier is **SAFECO INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**LINDA LEWIS  
1600 NORTH COLLINS BLVD., SUITE 300  
RICHARDSON, TEXAS 75080.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Robert W. Potts  
Appeals Judge