

APPEAL NO. 020705
FILED MAY 6, 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 March 6, 2002. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) is not entitled to have the date of statutory maximum medical improvement (MMI) extended because the requirements of Section 408.104 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.11 (Rule 126.11) were not met and that the respondent (carrier) did not waive the right to contest the Texas Workers' Compensation Commission's (Commission) order extending the date of statutory MMI. The claimant appeals, arguing that the hearing officer's determination that the claimant is not entitled to have the date of statutory MMI extended is contrary to Section 408.104 and Rule 126.11. The determination regarding the issue of waiver was not appealed. In its response, the carrier maintains that the issue being appealed by the claimant is solely a question of law and that the hearing officer decided this issue in accordance with prior holdings of the Appeals Panel.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____, and that the date of statutory MMI is August 24, 2001. It was undisputed that the Commission approved spinal surgery for the claimant on May 14, 2001, and that the claimant had spinal surgery on October 13, 2001.

The claimant contends that Rule 126.11(f) provides for an extension under extenuating circumstances which allow for an extension of the date of MMI for spinal surgery. The claimant contends that the fact that the surgery was initially scheduled prior to the date of statutory MMI and postponed through no fault of the claimant constitutes such an exception as to allow the extension of MMI beyond the statutory date. Subsection (4) of Rule 126.11(f) lists "delays in securing the surgery or medical treatment" as an enumerated factor for the Commission to consider in making the determination to approve or deny a request for extension. However, the beginning of Rule 126.11, in subsection (a), provides:

- (a) The commission may approve an extension of the date of [MMI], subject to subsection (f) of this section, if the injured employee has had spinal surgery or has been approved for spinal surgery 12 weeks or less before the expiration of 104 weeks from the date income benefits began to accrue. . . . Approval for spinal surgery is either the notification from the spinal surgery section of the commission or a decision from the appeal process finding the insurance carrier liable for the reasonable costs of spinal surgery. Any extension of the date

of [MMI] ordered by the commission must be to a specific and certain date. [Emphasis added.]

Approval is specifically defined as being when there is notification from the Commission (or an Appeals Panel decision) finding the carrier liable for reasonable costs of spinal surgery. Rule 126.11(f) only comes into play "if the injured employee has had spinal surgery or has been approved for spinal surgery 12 weeks or less before [statutory MMI]." Neither condition occurred here in that spinal surgery was approved on May 14, 2001, which is more than 12 weeks prior to the statutory MMI date of August 24, 2001, and spinal surgery was not performed until after statutory MMI. Spinal surgery, or the approval of spinal surgery, 12 weeks or less before statutory MMI, is a condition precedent to the application of Rule 126.11(f). See Texas Workers' Compensation Commission Appeal No. 002749-S, decided January 10, 2001.

The Appeals Panel has previously decided that there is no good cause exception to Section 408.104 or Rule 126.11. Texas Workers' Compensation Commission Appeal No. 010514, decided April 9, 2001. In Texas Workers' Compensation Commission Appeal No. 011553, decided August 10, 2001, the employee had spinal surgery 12 weeks and one day prior to the date of statutory MMI, and the Appeals Panel held that "[b]ecause the claimant underwent spinal surgery more than 12 weeks prior to the expiration of the 104-week period, the hearing officer properly concluded that the claimant was not entitled to an extension of statutory MMI, pursuant to Section 408.104." That same rationale applies in this case.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge