

APPEAL NO. 023246
FILED FEBRUARY 19, 2003

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 December 2, 2002. The hearing officer determined that the appellant (claimant herein) attained maximum medical improvement (MMI) on February 7, 2002, with a zero percent impairment rating (IR). The hearing officer also found that the claimant had disability from February 8, 2002, continuing through the date of the CCH. The claimant appeals the MMI and IR determinations, contending that they were contrary to the evidence, particularly in light of the fact that the Texas Workers' Compensation Commission (Commission) approved his spinal surgery. There is no response to the claimant's request for review from the respondent (carrier herein) in the appeal file. Neither party has appealed the hearing officer's finding of disability and it has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

Most of the relevant facts in this case are undisputed. The parties stipulated that the claimant sustained a compensable injury on _____, and that Dr. R was the designated doctor selected by the Commission to determine the date of MMI and IR. On February 7, 2002, Dr. R certified that the claimant attained MMI on that date with a zero percent IR.

It is apparent that the claimant's treating doctor strongly disagreed with Dr. R's certification; and It is also clear that Dr. R certified MMI and IR while the claimant was going through the second opinion spinal surgery process. That process resulted in the Commission determining that the carrier was liable for spinal surgery. This determination was disputed and taken to CCH at which the hearing officer determined that the claimant was entitled to spinal surgery. This decision was appealed to the Appeals Panel, which affirmed the decision of the hearing officer in Texas Workers' Compensation Commission Appeal No. 021282, decided June 26, 2002. Medical records in the present case show that spinal surgery was performed on July 16, 2002.

The designated doctor, when asked for clarification of his MMI and IR certifications in light of the claimant's surgery, refers the Commission back to his original report. In his original narrative report dated February 7, 2002, the designated doctor states as follows:

[The claimant] suffered strain of his lower back and right knee to some degree on __/__/____. Strains resolve in a relatively short time.

The treating doctor responded to the designated doctor's certification in a letter of March 13, 2002, stating as follows:

This is not consistent with an injured worker who sustained a severe injury to his back as well as his knee. He underwent a myelogram with a post myelogram CT on February 19, 2002, which is twelve days after he saw [Dr. R] and I enclose a copy of the report that shows a herniated lumbar disk at five millimeters, intraforaminal and extraforaminal with mass effect on the nerve roots with incomplete filling of the nerve roots as well as bulging disk above his herniation of 5-1 and 4-5.

The essential and underlying problem with this case is that there appear to be two very different views of the claimant's injury in the present case. One view, which appears to be shared by the carrier and the designated doctor, is that the claimant suffered muscle strains which should have long since resolved. The other view which seems to be shared by the claimant, his treating doctor, and the doctors in the spinal surgery process is that the claimant's injury includes the herniated disc for which the Commission found the carrier liable in resolving the spinal surgery issue.

The hearing officer resolves the present case without really determining which of these injuries is the claimant's actual injury by applying presumptive weight to the certification of the designated doctor. A valid certification of MMI and IR is of course entitled to presumptive weight. However, to be valid, a certification must consider the claimant's entire injury. It is not the function of the designated doctor to determine the extent of injury and the opinion of the designated doctor as to the extent of an injury is not entitled to presumptive weight.

It is not at all clear that the validity of the designated doctor's certification was considered in the present case. We therefore reverse the decision of the hearing officer and remand this case back to him. On remand, the hearing officer needs to determine whether the designated doctor considered the claimant's entire injury in certifying MMI and IR. If the hearing officer determines that the claimant's entire injury was considered, he needs to explain how this is consistent with the earlier spinal surgery determination. If the hearing officer determines that the claimant's entire injury was not considered, he needs to seek further clarification from the designated doctor requesting he consider the claimant's injury along the lines of the instructions we provided on remand in Texas Workers' Compensation Commission Appeal No. 022330, decided October 30, 2002. If the designated doctor refuses to provide an opinion as to MMI and IR based upon the claimant's entire injury, then the hearing officer needs to appoint a second designated doctor.

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 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**JEFF W. AUTREY
400 WEST 15TH STREET, SUITE 710
FIRST STATE BANK TOWER
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Edward Vilano
Appeals Judge