

APPEAL NO. 030936
FILED MAY 30, 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 was held on March 24, 2003. The hearing officer determined that appellant (claimant) reached maximum medical improvement (MMI) on April 20, 1998, with an impairment rating (IR) of 5%. Claimant appealed the hearing officer's determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand.

Claimant's treating doctor, Dr. D, originally signed a Report of Medical Evaluation (TWCC-69) that contained a prospective date of MMI. Dr. D had examined claimant on March 26, 1998. Dr. D then signed a TWCC-69 on April 20, 1998, saying that claimant reached MMI on that same date with a 5% IR. The hearing officer determined that this IR was invalid, but it was not an invalid IR. See Texas Workers' Compensation Commission Appeal No. 94579, decided June 22, 1994. The hearing officer found that claimant received notice of this IR in May of 1998 and this determination is not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Claimant eventually returned to work after his injury, but said he continued to have problems with his compensable back injury. He testified that he was fired from his job after he sustained another, unrelated injury. Claimant obtained a new job, but said his condition kept getting worse. Claimant reached statutory MMI on November 27, 1999. Claimant said he repeatedly asked Dr. D to refer him to another doctor, and Dr. D referred claimant to Dr. W, who saw claimant in May 2001. Dr. W requested a discogram, which was finally performed in September 2001. Dr. W then began the spinal surgery process and claimant had surgery on March 18, 2002, two years and four months after statutory MMI. Claimant challenged the treating doctor's 5% IR one month after he had surgery. A designated doctor, Dr. M, was appointed, who certified on January 6, 2003, that claimant reached MMI on the statutory date, November 27, 1999, with an IR of 16%.

Claimant contends that the hearing officer erred in failing to give presumptive weight to the designated doctor's report. We agree. While we recognize the need for finality in MMI and IR determinations, we find no authority to support the hearing officer's contention that any change of condition after statutory MMI may not be considered by a designated doctor. Texas Workers' Compensation Commission Appeal No. 030704, decided April 30, 2003. Carrier cites Fulton v. Associated Indemnity Corporation, 46 S.W.3d 364 (Tex. App.-Austin 2001, pet. denied), in support of the proposition that changes in medical condition after statutory MMI cannot be considered. However, the language in Fulton in that regard is dicta. We reverse the hearing officer's

determination that claimant waived the right to dispute the treating doctor's IR. We note that Texas Workers' Compensation Commission Appeal No. 021085, decided, June 21, 2002, involved a claimant's failure to timely challenge the report of a designated doctor. Further, in Appeal No. 030704, we discussed whether there is a time limit for challenging an IR. We reverse the hearing officer's determination that the designated doctor's report is not entitled to presumptive weight. We also reverse the hearing officer's determination that the great weight of the other medical evidence is contrary to the designated doctor's report. In determining whether the great weight of the other medical evidence was contrary to the designated doctor's report, the hearing officer's focus was on claimant's impairment before the statutory MMI date. Therefore, the hearing officer has not properly considered this case. We reverse the hearing officer's determination that claimant reached MMI on April 20, 1998, with a 5% IR, and remand this case to the hearing officer for reconsideration of the MMI and IR issues.

We reverse the hearing officer's decision and order and remand this case to the hearing officer for reconsideration consistent with this decision. 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 Texas Workers' Compensation 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.

According to information provided by carrier, the true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Veronica Lopez-Ruberto
Appeals Judge

Robert W. Potts
Appeals Judge