APPEAL NO. 031839
FILED AUGUST 26, 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 May 22, 2003, with the record closing on June 9, 2003. With regard to the disputed issues before her, the hearing officer determined that the respondent/cross-appellant (claimant) had disability from May 16 to December 22, 1997; that the claimant did not have disability from April 5, 1996, to May 15, 1997; and that the Texas Workers' Compensation Commission (Commission) "had the right to appoint a designated doctor on the issue of [impairment rating (IR)] in this case since one had not previously been selected."

The appellant/cross-respondent (self-insured) appealed, requesting "[t]hat the [Commission] Appeals Panel follow Texas Law to Apply a Reasonable Time Analysis as Reemphasized by the Texas Supreme Court in the Brockette Case," (Westheimer Independent School District v. Brockette, 567 S.W.2d 780 (Tex. 1978). The self-insured also appeals the disability period found by the hearing officer. The claimant appeals the hearing officer's determination that he did not have disability between April 5, 1996, and May 15, 1997. The self-insured responded to the claimant's appeal requesting affirmance on the appealed disability period. The file does not have a response from the claimant to the self-insured's appeal.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable L5-S1 spinal injury on _____ (in a motor vehicle accident (MVA)), that the only period of disability at issue is from April 5, 1996, through December 22, 1997, and that the claimant reached statutory maximum medical improvement (MMI) (*see* Section 401.011(30)(B)) on December 22, 1997. (The parties appear to confuse statutory MMI with the end date of disability as defined in Section 401.011(16).)

Perhaps the best way to summarize the facts is to recite the applicable time line.

12-18-95	Date of compensable injury.
12-22 to 3-7-96	Treatment by (Dr. M).
4-96	The claimant goes to Mexico.
4-5-96	The claimant is involved in a serious MVA in Mexico.
4-96	The claimant has L1 spinal surgery in Mexico.
4-22-96	The self-insured denies further income and medical benefits due to the intervening Mexico MVA.
5-8-96	The claimant returns to (city).
5-96 to 5-16-97	No U.S. treatment for the compensable injury.

5-16-97	Begin treatment with Dr. R.
12-22-97	The agreed-on statutory MMI date.
4-13-98	The claimant is evaluated by Dr. S, who is a Commission-selected required medical examination (RME) doctor, but marks the Report of Medical Evaluation (TWCC-69) as a designated doctor. (Dr. S assess a 9% IR but IR is not an issue.)
5-5-98	Dr. S amends her IR based on new medical information and marks that she is a Commission-selected RME doctor.
5-12-98	Dr. R agrees with Dr. S's assessment.
7-20-98	A CCH is held, and regarding the only issue, the hearing officer determines that the compensable injury is a cause of the claimant's L5-S1 conditions after (the Mexico MVA) April 5, 1996. No timely appeal of the decision is taken.
9-7-00	The claimant has spinal surgery at L5-S1.
2-12-01	Dr. R assesses MMI with a 15% IR.
7-9-02	The claimant requests a designated doctor.
7-16-02	The Commission appoints a designated doctor.

The self-insured asserts that the claimant's request for a designated doctor on July 9, 2002, was not made within a reasonable time (apparently of Dr. S's May 1998 amended report) and requests that we "apply a reasonable time standard" as to when a designated doctor may be requested, citing Brockette for the proposition that "when the statute fails to prescribe…a time limit" a reasonable time must be used. We do not believe that Brockette is applicable to the case before us. In Brockette an administrative board created a school district and the board's action was not challenged in District Court for a period of several years. The court held that when a statute fails to prescribe a time limit, an appeal must be taken within a reasonable time. In the instant case there was no administrative board action from which to take an appeal. Further the 1989 Act does contain certain time limits and administrative rules have been implemented (and in some cases held invalid by court action) and later adopted or amended by statute. However, probably most compelling is the provision in Section 408.125 which directs that if an IR is disputed, the Commission shall direct the employee be examined by a designated doctor. Efforts to limit the time that an employee has to dispute the first IR assessed have been struck down by the courts (*see* Fulton v. Associated Indemnity Corporation, 46 S.W.3d 364 (Tex. App.-Austin 2001, pet. denied) as has been the Appeals Panel authority to create new requirements to the 1989 Act. *See* Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 548 (Tex. 1999). We would further note that the holding in Brockette, although termed as "findings of law" demonstrate at least an implied finding by the trial court that the parties had delayed unreasonably in seeking further administrative review (*see id.* at 791). By contrast, in this case, the hearing officer, in both her discussion and findings of fact (Finding of Fact No. 16), found the claimant's delay "reasonable under the

circumstances." We conclude that the hearing officer did not err in determining that the Commission had the right to appoint a designated doctor to assess the claimant's IR.

On the issue of disability, we note that on April 5, 1996, the claimant was involved in a serious MVA in Mexico and subsequently had spinal surgery at L1 unrelated to the compensable injury. The hearing officer's determination that the claimant did not have disability (as defined in Section 401.011(16)) from April 5, 1996, until May 15, 1997, is supported by the evidence in that the hearing officer could conclude that the claimant's inability to obtain and retain employment was due to the April 5, 1996, MVA in Mexico. Conversely, the hearing officer's determination that the claimant had disability from May 16, 1997, when he first saw Dr. R, to December 22, 1997, is supported by the medical records of Dr. R.

We have reviewed the complained of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

MANAGER
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge