

APPEAL NO. 032328  
FILED OCTOBER 9, 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 August 8, 2003. With respect to the sole disputed issue before her, the hearing officer determined that the respondent (claimant herein) is entitled to have her statutory maximum medical improvement (MMI) date extended to May 4, 2004, pursuant to Section 408.104. The appellant (carrier herein) files a request for review, arguing that the hearing officer's decision to extend the MMI date was contrary to the evidence; that the hearing officer erred in excluding a medical report it offered; that the hearing officer erred in extending the MMI date more than 12 weeks beyond the date of statutory MMI; and that the hearing officer's decision includes a typographical error concerning the date to which she extended the date of MMI. The claimant responds that the evidence supports the decision of the hearing officer and that the hearing officer did not err in excluding evidence that was not timely exchanged.

DECISION

We reform the decision of the hearing officer to correct typographical errors. Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer, as reformed.

As far as the carrier's evidentiary point is concerned, the hearing officer excluded a report from the carrier's peer review doctor. It was undisputed that this report was not exchanged within 15 days of the benefit review conference (BRC). The carrier argued that it had good cause for failing to exchange the document timely because the document was not in existence until more than 15 days after the BRC and the carrier exchanged the medical report as soon as it received it. The hearing officer found that the carrier did not have good cause because it failed to exercise due diligence by not obtaining the document earlier. As the report reflects on its face that it was created at the request of the carrier, a request which was made only two days prior to its creation, we do not find that the hearing officer abused her discretion by finding the carrier did not have good cause for the untimely exchange because it did not act with due diligence. Thus, we find no error in her excluding the peer review report.

Section 408.104 is entitled "[MMI] After Spinal Surgery" and applies to claims for injuries that occur on or after January 1, 1998. It provides in part:

- (a) On application by either the employee or the insurance carrier, the [Texas Workers' Compensation Commission] by order may extend the 104-week period described by Section 401.011(30)(B) if the employee has had spinal surgery, or has been approved for spinal surgery under Section 408.026 and commission

rules, within 12 weeks before the expiration of the 104-week period. If an order is issued under this section, the order shall extend the statutory period for [MMI] to a date certain, based on medical evidence presented to the commission.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.11 (Rule 126.11) is entitled "Extension of the Date of [MMI] for Spinal Surgery." Subsection (f) provides:

In making the determination to approve or deny a request for an extension of the date of [MMI], the commission shall consider:

- (1) typical recovery times for the specific spinal surgery procedure;
- (2) projected date and information regarding when the condition may be medically stable as provided by the treating doctor or surgeon;
- (3) case specific information regarding any extenuating circumstances that may have resulted in variances from conservative treatment protocols and time frames that may impact recovery times as provided by the treating doctor or the surgeon;
- (4) information from any source regarding intentional or non-intentional delays in securing the surgery or medical treatment for the compensable injury;
- (5) any pending, unresolved disputes regarding the date of [MMI]; and
- (6) any pertinent information provided by the insurance carrier, injured employee, and/or the injured employee's representative regarding the extension being requested under this section.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that her statutory MMI date was November 15, 2002; that the carrier approved her request for spinal surgery on October 23, 2002, and that she underwent spinal surgery on November 4, 2002. The hearing officer determined that the facts did support the extension of the claimant's statutory MMI date for six months.

The hearing officer's determination of the six-month time extension was based upon medical evidence that recovery time from multilevel spinal fusion varied from six months to a year. The hearing officer was acting within her province as the fact finder in resolving the conflicting evidence and nothing in our review of the record demonstrates that the hearing officer's determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

However, there are typographical errors in the decision of the hearing officer. While she clearly states in her decision that the MMI date should be extended for six months until May 3, 2003, in both her findings of fact and conclusions of law the date to which MMI is extended is stated as May 3, 2004. The use of May 3, 2004, is clearly a typographical error. We therefore reform the decision and order of the hearing officer to read "May 3, 2003" wherever it reads "May 3, 2004."

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 N. ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge