APPEAL NO. 041722
FILED SEPTEMBER 2, 2004

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 June 17, 2004. The hearing officer determined that the appellant/cross-respondent's (claimant) compensable (left knee and chest) injury does not extend to the lumbar injury or to chondromalacia; that the claimant reached maximum medical improvement (MMI) on October 30, 2003; and that the claimant had disability from August 28 through October 30, 2003.

The claimant appeals the extent-of-injury issue on sufficiency of the evidence grounds contending that she has not yet (as of June 17, 2004) reached MMI and that she had disability from August 28, 2003, through the date of the CCH. The respondent/cross-appellant (carrier) appeals the MMI date and disability issues contending that the designated doctor's MMI date has presumptive weight and the hearing officer failed to indicate why she rejected the designated doctors MMI date. The carrier also contends that if the designated doctor's MMI date were adopted, the disability issue "would be moot." Both parties responded to the other's appeal.

DECISION

Affirmed in part, reversed and a new decision rendered in part, and reversed and remanded in part.

The claimant, a security officer, sustained a compensable injury on _____, when she fell opening a malfunctioning gate. It is undisputed that the claimant sustained at least a left knee contusion and chest contusion. The claimant was seen in a hospital emergency room where a left knee sprain was diagnosed and the claimant was taken off work. The claimant was then treated at (clinic) where left knee and chest contusions were diagnosed. The claimant subsequently began treating with Dr. J, a chiropractor, on January 9, 2003, who diagnosed several other conditions in addition to the chest and left knee contusions. The parties stipulated that Dr. D was the first designated doctor. Dr. D, in a report dated April 29, 2003, stated that the claimant was not at MMI. The claimant changed treating doctors to Dr. E, also a chiropractor, in July 2003. The claimant was examined by Dr. W, who the parties stipulated was the (second) designated doctor. In a report dated August 28, 2003, Dr. W certified MMI on that date finding "no signs of an injury." Dr. E referred the claimant to Dr. H who performed a left knee arthroscopy for a "chondral injury with unstable elements" on September 16, 2003. The claimant was also examined by Dr. F, a Texas Workers' Compensation Commission (Commission)-required medical examination doctor, who in a report dated October 30, 2003, had an impression of several resolved sprains, no significant injury to the left knee and certified MMI on that date with a 0% impairment rating (IR).

## EXTENT OF INJURY

There was conflicting medical evidence on the issue of whether the compensable injury included the lumbar spine (perhaps a strain/sprain) and left knee chondromalacia patella. Dr. E thought that the compensable injury included those conditions while Dr. W, Dr. D, and Dr. F thought otherwise. It was within the province of the hearing officer, as the trier of fact to resolve the conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer's determination on the extent of injury is supported by the evidence and is affirmed.

## MMI DATE

In evidence is Dr. W's, the second designated doctor, report certifying MMI on August 28, 2003. The only other report certifying an MMI date is Dr. F's report certifying October 30, 2003, as the MMI date which was adopted by the hearing officer. However, Dr. F was only asked to give an opinion on the extent of injury and his MMI date was only to preface the IR and fairly clearly considered the September 2003 surgery. Section 408.122(c) provides that for a claim for workers' compensation benefits based on a compensable injury that occurs on or after June 17, 2001, the report of the designated doctor has presumptive weight, and the Commission shall base its determination of whether the employee has reached MMI on that report unless the great weight of the other medical evidence is to the contrary. Whenever the hearing officer rejects a designated doctor's report, the hearing officer should "clearly detail the evidence relevant to his or her consideration." Texas Workers' Compensation Commission Appeal No. 030091-s, decided March 5, 2003. In this case the hearing officer simply finds that the designated doctor's report "is not entitled to presumptive weight" and that the "great weight of other medical evidence is contrary to the designated doctor's certification as to date of MMI." The hearing officer gives no reason why she is rejecting the designated doctor's MMI date. Although the claimant had left knee surgery in September 2003, which might be a reason to extend the date of MMI, the reason for the surgery was the chondral condition which the hearing officer found, and we affirmed, was not part of the compensable injury. We reverse the hearing officer's determination on MMI and render a new decision that the claimant's date of MMI is August 28, 2003, as certified by Dr. W, the designated doctor, whose opinion is not contrary to the great weight of other medical evidence.

## DISABILITY

The parties and the hearing officer appear to equate disability with the MMI date. In fact the carrier, in its appeal, comments that "had the hearing officer adopted the MMI date of the designated doctor, the issue would be moot." Disability is defined in Section 401.011(16) and has nothing to do with MMI. Disability can, of course, extend past the date of MMI, however, pursuant to Section 408.101 the payment of temporary income

benefits requires that the employee "has a disability and has not attained [MMI]." The claimant, and the claimant's treating doctor both state that the claimant has continuing disability, evidence which the hearing officer may, or may not believe. Accordingly, we remand the case for the hearing officer to make a determination on disability which is supported by the evidence and meets the provisions of the 1989 Act. No additional hearing needs to be held, however, the parties should be given an opportunity to present argument.

We affirm the hearing officer's determination on the extent-of-injury issue, we reverse and render a new decision that the claimant reached MMI on August 28, 2003, and we remand the case for the hearing officer to make a new determination on the issue of disability after August 28, 2003.

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 **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY**
**701 BRAZOS, SUITE 1050**
**AUSTIN, TEXAS 78701**.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Margaret L. Turner
Appeals Judge