

APPEAL NO. 060317
FILED MARCH 30, 2006

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 January 11, 2006. With regard to the disputed issues the hearing officer determined that the date of maximum medical improvement (MMI) is February 4, 2004, and the impairment rating (IR) is 18%.

The appellant (claimant) appealed, contending that the hearing officer's Finding of Fact No. 3 was incorrect in regards to the designated doctor's last examination date and the MMI date. The claimant contends that the designated doctor was "badgered" into changing his IR and that the MMI date is not supported by the evidence. The respondent (self-insured), in a letter dated February 14, 2006, agrees that the February 4, 2004, MMI date should be February 2, 2004, and requested a correction of clerical error pursuant to 28 TEX. ADMIN. CODE § 140.5 (Rule 140.5). In response to the claimant's appeal the self-insured agrees that the correct MMI date is February 2, 2004, and otherwise urges affirmance.

DECISION

Reversed and a new decision rendered on the MMI date.

The parties stipulated that the claimant sustained a compensable injury on _____. It is undisputed that the claimant had a two-level cervical fusion on August 27, 2003. A referral doctor in a report dated February 9, 2004, certified MMI on February 2, 2004, and a 15% IR based on the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) Diagnosis Related Estimate (DRE) Cervicothoracic Category III: Radiculopathy. Subsequently the designated doctor, in a report of March 10, 2004, certified MMI on February 2, 2004, with a 30% IR based on 7% impairment for the left shoulder and 25% impairment for DRE Cervicothoracic Category IV based on Advisory 2003-10 signed July 27, 2003. After a peer review report, a second report from the designated doctor and a required medical examination report which was sent to the designated doctor, the designated doctor re-examined the claimant on May 4, 2005 (not on May 5, 2005, as found by the hearing officer in Finding of Fact No. 3) again certified MMI on February 2, 2004, and assessed an 18% IR based on 4% whole person impairment of the left shoulder and DRE Cervicothoracic Category III: Radiculopathy, commenting that "this examiner no longer adheres to the TWCC Advisory 2003-10 and 2003-10B." In a report dated October 10, 2005, the claimant's current treating chiropractor certified MMI on January 25, 2005, and assessed a 29% IR based on use of Advisory 2003-10 to assess a 25% impairment for DRE Cervicothoracic Category IV and for the first time assessed a 5% impairment for DRE Lumbosacral Category II: Minor Impairment. There is conflicting evidence regarding the IR and use or non-use of Advisories 2003-10 and 2003-10B. The hearing

officer's determination of an 18% IR is sufficiently supported by the evidence and is affirmed.

All of the medical reports which give an MMI date, except the treating chiropractor's January 25, 2005, report, certify MMI on February 2, 2004, not February 4, 2004, as found by the hearing officer in his Background Information, Finding of Fact No. 3, Conclusion of Law No. 3 and the Decision. We reverse the hearing officer's determination that the date of MMI is February 4, 2004, as not being supported by the evidence and render a new decision that the date of MMI is February 2, 2004.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge