APPEAL NO. 950230

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 9, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 9, 1994, with seven percent impairment rating (IR) as found by the designated doctor, (Dr. D). Claimant asserts in multiple submissions that claimant only recently chose his own doctor, (Dr. S), that a determination of MMI is premature, and that he disputes that MMI was found and the amount of the IR. Carrier replies that claimant's appeal was not timely citing his admission that he was late in filing and also asks that the hearing officer be affirmed.

DECISION

We affirm.

Claimant mistakenly referred to his time for appeal as dating from the time the hearing officer signed his decision. Carrier asserted that the appeal was not timely based on that statement. The 1989 Act at Section 410.202 provides that an appeal must be made not later than 15 days after the party receives the hearing officer's decision. Other sections and rules address filing, but are not relevant to this discussion. With the hearing officer's decision distributed to the parties on February 9, 1995, the claimant's copies of appeals received on February 16, 22, and 24, 1995, are all timely and were considered. Claimant's amended appeals received on March 14 and 16, 1995, were not timely filed and were not considered. Carrier's response was timely and was considered.

Claimant worked for (employer) when he hurt his back on (date of injury), while riding in the bucket of a front-end loader. He at first was being treated by (Dr. P) but requested that he be treated by Dr. S, which was approved by the Texas Workers' Compensation Commission (Commission) in May 1993. Dr. S requested an MRI of claimant in May 1993 which showed: (1) degenerative disc disease, (2) degenerative facet disease, (3) spondylolysis, and (4) a suspected small disc herniation; all references made were to L5 and S1. In November 1993 a note indicates that claimant completed work hardening.

Dr. S referred claimant to (Dr. F) who certified that claimant reached MMI on February 10, 1994 with five percent IR; Dr. S did not agree with this and commented that he did not know why such a declaration had been made. Dr. S then found MMI on March 9, 1994, with 18% IR, which included 11% for range of motion limitations.

The record is not clear whether (Dr. B) was to see claimant in November 1993 for a carrier selected medical examination or as a designated doctor. No question of his status was an issue at the hearing or upon appeal. Dr. D was selected as the designated doctor for both MMI and IR and was scheduled to see the claimant on August 16, 1994.

Dr. D saw the claimant on August 16, 1994, evaluated him, and noted a "feel" that claimant had reached MMI on March 9, 1994. While the designated doctor's evaluation will be briefly discussed, we observe first that claimant only appeals the prematureness of a determination of MMI and asserts that he only recently was able to choose his own doctor. The record shows that claimant chose Dr. S in May 1993 and also that Dr. S, himself, found MMI on the same date, March 9, 1994, as found by Dr. D. Claimant acknowledged at the hearing that he was examined by Dr. D and then (Dr. C) used a device on his back as he bent. The only criticism at the hearing as to the designated doctor's evaluation was that it was not as thorough as Dr. S's, but this point was not raised on appeal.

Dr. D was the appointed designated doctor; the record indicates that he performed his function adequately, choosing to use another practitioner, Dr. C, to do the IR, which Dr. D then adopted. Dr. D and Dr. C then chose to sign the Report of Medical Evaluation (TWCC-69) in such a way as to create the appearance of a question. Dr. D signed the form as a treating doctor, not the designated; Dr. C signed, stating that MMI had been reached, marking his status as "other" rather than as "designated." Dr. D in signing as if he were the treating doctor agreed with Dr. C as to MMI, when in fact Dr. D had determined MMI before turning the claimant over to Dr. C for the impairment evaluation; Dr. C refers to Dr. D determining MMI; Dr. C does not attempt to give his own opinion as to MMI. Such a report from a designated doctor, as stated, can appear to be confusing. If made part of an appealed issue, it could affect the ultimate determination on appeal. While both Dr. D and Dr. C work for Texas Back Institute (back specialists), Texas Workers' Compensation Commission Appeal No. 94078, decided March 1, 1994, points out that a particular doctor is to be designated under the 1989 Act, not a group. The designated doctor may use evaluations of others, including a measurement of impairment performed at the time, but must examine the claimant himself and must make the opinions or conclusions of others his own. The designated doctor must clearly give his opinion in the areas for which he was appointed, MMI and/or IR, and must be prepared to accept personal responsibility for that opinion as his own. The 1989 Act in giving the designated doctor presumptive weight does not contemplate giving presumptive weight to a doctor identified as a "treating doctor."

Finding the decision and order of the hearing officer set forth at the conclusion of his opinion to be sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge