

APPEAL NO. 950311

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 24, 1995, a contested case hearing was convened in (city), Texas, with (hearing officer) presiding. The sole issue during the hearing was the date that the appellant, (claimant), who is the claimant, reached maximum medical improvement (MMI). Claimant was employed at the time of her injury by (hospital), a self-insured entity (hereinafter referred to as employer or carrier, depending upon the context). She injured her back lifting a patient on (date of injury), and was off work for some time following this, with intermittent disability thereafter. Her eighth day of disability was September 16, 1991. By the time of the hearing she had surgery for her back, from which there had been complications. Claimant was being paid supplemental income benefits which continued at the time of the hearing.

The hearing officer found that claimant had reached MMI according to the provision of the 1989 Act that makes MMI the earlier of "medical" MMI or 104 weeks from the date income benefits accrued. The date that the hearing officer found was the date of MMI, according to this definition, was September 13, 1993. He further found, as fact, that further material recovery from her injury was anticipated as of that date. No re-injury was asserted by the claimant.

The claimant has appealed. She argues that several findings of the hearing officer, such as the one agreeing that further material recovery was anticipated, are insufficiently descriptive about her condition. The major point of appeal, however, is that the definition of MMI which places its occurrence at 104 weeks from the date of income benefits accrual merely creates a rebuttable presumption that may be overcome by a showing that there remain significant medical problems. She argues that the hearing officer has erred legally and factually and that operation of the MMI definition in this manner deprives her of due process.

DECISION

We affirm.

The matter at hand is purely a question of law. Although the claimant argues that the hearing officer was not sufficiently descriptive in his decision as to the nature of further surgery that was needed by claimant in September 1993, the hearing officer agreed, and found, that further material recovery was anticipated at that point. As there has been no appeal of the substance of that finding, there is no dispute for purposes of this appeal that claimant had not reached MMI from a medical standpoint in September 1993. As we see it, the issue is whether this fact can rebut the alternative provision of the definition of MMI that sets MMI at a "nonmedical" point of 104 weeks after the date income benefits accrue. We hold that the hearing officer's interpretation of the law was correct, and that the lack of statutory MMI from a medical standpoint does not rebut achievement of MMI as the hearing officer found.

We believe that the statute, Section 401.011(30), expressly defines the point at which MMI is found. We do not believe that the statute creates a "presumption" but sets out those facts which mark the point of MMI. This section states that MMI means:

. . . the earlier of: (A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated; or (B) the expiration of 104 weeks from the date on which income benefits begin to accrue.

It seems clear to us that by fixing MMI at the earlier of the achievement of medical MMI, or the expiration of 104 weeks, the Legislature established the maximum time frame for receipt of temporary income benefits (TIBS) that was intended to apply to all claimants, even those who have not reached MMI from a medical standpoint. This definition of MMI is referred to by the agency as "statutory MMI."

Because Section 401.011(30)(B) MMI is based only upon the passage of 104 weeks, it is rebuttable only by a factual showing that this amount of time has not passed. A showing that MMI was not reached medically is irrelevant when statutory MMI is achieved first. The direction that MMI is "the earlier" of the two fact situations described does not leave the hearing officer with discretion to resort to a date when MMI is reached medically, when that date is later than "statutory MMI."

We note that there is no common law right to workers' compensation; the right to compensation is therefore limited to that which a statute provides. Antwine v. Dallas Independent School District, 698 S.W.2d 226 (Tex. App.-Dallas 1985, writ ref'd n.r.e.). We do not regard the application of the statutory definition by the hearing officer as a deprivation of due process.

Finally, the findings of fact set out in the hearing decision are adequate to support the decision on the matter in issue. As the date of MMI in this case was established based upon the passage of time, and not upon medical evidence, there is no error in the fact that the hearing officer did not fully describe claimant's medical condition in his findings of fact. We note that the hearing officer allowed claimant to fully develop the medical evidence related to her injury.

Finding no error in the hearing officer's decision, we affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge