APPEAL NO. 950398

A contested case hearing (CCH) was originally held in (city), Texas, on October 5, 1994, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) with (hearing officer) presiding as hearing officer. In Texas Workers Compensation Commission Appeal No. 941437, decided on December 8, 1994, the Appeals Panel reversed the decision of the hearing officer and remanded for the hearing officer to determine whether the appellant/cross-respondent (claimant) had reached maximum medical improvement (MMI), and if so on what date and the impairment rating (IR) of the claimant. The hearing officer held another CCH on February 23, 1995, and rendered another decision on February 24, 1995. He determined that the claimant reached MMI on February 1, 1994, with a four percent IR as certified by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appealed urging that the hearing officer erred in not providing to the benefit review officer (BRO) and the designated doctor medical records concerning medical treatment after the first CCH on October 5, 1994; that the hearing officer erred in not directing the BRO to conduct another benefit review conference (BRC); and that the designated doctor and the hearing officer erred in not consolidating her IR from her previous injury with that of her current injury to qualify her for supplemental income benefits (SIBS). The respondent/cross-appellant (carrier) filed an appeal to be considered only if the claimant appealed urging that the hearing officer erred in admitting the medical records concerning the claimant's treatment after the first CCH. The claimant responded arguing that the hearing officer did not commit error in admitting the medical records. The carrier responded arguing that the hearing officer did not commit error in refusing to send the medical records to the designated doctor and that the hearing officer's determinations concerning MMI and IR are supported by sufficient evidence.

DECISION

We affirm.

The carrier requests that we determine whether the claimant filed a timely appeal. Section 410.202(a) provides that a party desiring to appeal the decision of the hearing officer must do so not later than 15 days after receiving the decision from the division of hearings. The decision of the hearing officer was mailed on March 9, 1995; the claimant stated that she received the decision on March 11, 1995; and the claimant's appeal is dated March 17, 1995, and was received by the Commission on March 21, 1995. Therefore, the claimant filed a timely appeal. The claimant also filed a response to the conditional appeal filed by the carrier. The response was timely filed to be considered as a response, but it was not timely filed to be considered as an appeal.

The hearing officer returned the matter to the BRO with directions to have the designated doctor determine if the claimant has reached MMI on his examination of the medical records and his examination of the claimant, not to rely upon (Dr. M) prospective date of MMI, and if the IR exceeds four percent to make recommendations regarding the

percentage of the claimant's IR that was due to prior compensable injuries. The record contains a February 1, 1994, MMI date in a report from (Dr. P). Dr. K responded that the claimant reached MMI on February 1, 1994, with a four percent IR. A copy of the questions and Dr. K's responses to those questions were sent to the parties by the BRO. At the hearing the claimant requested a BRC to consider the responses of Dr. K. The hearing officer denied the request. At the hearing the claimant also made a request to send additional medical records to Dr. K. The claimant said that she got the records from Dr. M on February 20, 1995; sent a copy to the carrier; but had not prior to the hearing on February 23, 1995, asked that a copy be sent to Dr. K. The medical records consist of a letter from Dr. M dated November 15, 1994; a report from Dr. M dated January 20, 1995; and reports and notes from a physical therapist dated in December 1994. The hearing officer denied the request. The claimant offered the medical records and they were admitted.

The claimant urges that the hearing officer erred in not directing the BRO to hold another BRC. The hearing officer elected to have the BRO correspond with the designated doctor. The hearing officer could have corresponded directly with the designated doctor. The hearing officer did not commit error by not directing that another BRC be held. The hearing officer was instructed to resolve the disputes on remand, and he did so.

The claimant also urges that the hearing officer erred in not sending the medical records to the designated doctor for consideration. In the report dated January 20, 1995, Dr. M reported that in his opinion the claimant had reached MMI and that she required an IR for both the cervical injury as well as the lumbar injury. Dr. M also noted that his impression was "(1) Status post lumbar laminectomy with continued radicular like pain down both legs, (2) Cervical spondylosis, (3) Chronic pain syndrome, (4) Morbid obesity, and (5) Reactive depression, improved." That is basically the same impression that Dr. M noted in a report dated August 29, 1994, that was admitted at the first hearing. Medical records indicate that the claimant has had several workers' compensation injuries and had surgery on November 9, 1992, for a 1991 lumbar injury. We remanded for the hearing officer to instruct the designated doctor to determine if the claimant had reached MMI based on his examination of the medical records and on his examination of the claimant. The hearing officer did not err in not sending medical records that are dated after the date of the first hearing to the designated doctor for consideration. Also, the hearing officer did not commit error in admitting these medical records and considering them in determining whether the great weight of the other medical evidence is contrary to the report of the designated doctor.

The claimant also urges that it was error for the designated doctor and the hearing officer not to include her prior injuries in the IR. Section 401.011(23) states that impairment "means any anatomic or functional abnormality or loss existing after [MMI] that results from a compensable injury and is reasonably presumed to be permanent." The IR from the claimant's cervical injury is four percent and the designated doctor was instructed that if the IR exceeded four percent that he was to make recommendations concerning IR from prior compensable injuries. The designated doctor did not include impairment to the lumbar

spine in his IR. There is no showing that the designated doctor did not follow the instructions and no showing of error.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge