

## APPEAL NO. 950439

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 21, 1994, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) is not entitled to reopen issues of maximum medical improvement (MMI) and impairment rating (IR). Claimant asserts that additional medical evidence has been developed since his prior contested case hearing on these issues and that a district court only ruled against him because he was one day late in filing his petition; he requests that the named issues be reopened. Respondent (carrier) replies that jurisdiction has been lost as to these issues in this case and asks that the hearing officer's decision be affirmed.

### DECISION

We find that the final administrative action on the issues presented for review was taken by Texas Workers' Compensation Commission Appeal No. 93093, decided March 19, 1993, which affirmed that hearing officer's determination that MMI was reached on June 23, 1992, with a 12% IR.

These issues, as they relate to claimant's injury of (date of injury), were considered at a contested case hearing on October 21, and December 29, 1992. That hearing considered medical evidence as to MMI and IR from claimant's treating doctor and the designated doctor. In addition, claimant testified as to treatment received from his most recent physician, (Dr. K). The hearing officer found MMI and IR based on the designated doctor's opinion. As stated, Appeal No. 93093, *supra*, affirmed the hearing officer's decision.

In seeking to reopen these issues, claimant does not allege that any new injury occurred, such as an aggravation caused by the continuing medical treatment of the injury of (date of injury). Claimant only contends that as a result of the injury of (date of injury), he had not reached MMI on June 23, 1992, but reached that point on April 7, 1993, with 15% IR, as shown by a report of Dr. K, dated April 7, 1993.

After Appeal No, 93093, *supra*, affirmed the hearing officer's decision, claimant petitioned the 117th Judicial District Court, (County), Texas, to change his date of MMI to April 7, 1993, and his IR to 15%. The court granted summary judgment against claimant after a showing that the petition was filed on the 41st day after the date the Appeals Panel decision was filed. (See Section 410.252 for the requirement to seek judicial review not later than the 40th day after the Appeals Panel decision is filed. See *Also* Section 410.205 making the decision of the Appeals Panel final in the absence of a timely appeal.)

Texas Workers' Compensation Commission Appeal No. 94960, decided September 1, 1994, and Texas Workers' Compensation Commission Appeal No. 941411, decided December 7, 1994, have held that attempts to relitigate issues will be unsuccessful when final administrative action has been taken.

We agree that claimant is not entitled to reopen issues of MMI and IR as is reflected in the decision and order in the case under review. We emphasize that medical benefits necessary to the care of a compensable injury do not cease when MMI is reached. Appeal No. 93093, *supra*, was the claimant's final administrative action in regard to issues of MMI and IR stemming from the compensable injury of (date of injury).

---

Joe Sebesta  
Appeals Judge

CONCUR:

---

Robert W. Potts  
Appeals Judge

---

Tommy W. Lueders  
Appeals Judge