APPEAL NO. 012522-s
FILED NOVEMBER 26, 2001

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 011847, decided September 19, 2001, where we remanded the case for the required carrier information. That information was placed in the record and forwarded to the respondent (claimant). No hearing on remand was held, and the hearing officer's decision and order were reissued. This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 6, 2001. The record closed on June 28, 2001. The hearing officer determined that the claimant reached maximum medical improvement (MMI) on June 8, 1996, and that her impairment rating (IR) is 29%. The appellant (carrier) appealed, arguing that the designated doctor's first certification that MMI was reached on January 18, 1995, with an IR of 11%, should be accepted; that the hearing officer does not have authority to issue the interlocutory order which he issued; and that it was not proper for the hearing officer to order that interest be paid. The claimant urges that the decision and order of the hearing officer be affirmed.

DECISION

Affirmed.

The claimant in this case sustained a compensable injury on _____, which included her cervical and lumbar spine and bilateral upper extremities. She was treated conservatively for several months by her treating doctor, Dr. M. On January 18, 1995, she was examined by Dr. G, a carrier-selected doctor who certified that the claimant had reached MMI on that date with an IR of 11%. The claimant disputed the report of Dr. G. A Texas Workers' Compensation Commission (Commission)-appointed designated doctor, Dr. S, examined the claimant and, in a Report of Medical Evaluation (TWCC-69) dated May 3, 1995, concurred with Dr. G, finding that the claimant was at MMI on January 18, 1995, with an IR of 11%. Dr. S noted in his report that the claimant's "medical condition has reached a static course," but pointed out that the claimant would need to have continued medical care to maintain MMI. He went on to state:

> In addition, one other point I would like to make is that if her treating doctors ever feel that she needs to have surgery to any of these areas then of course this MMI will have to be rescinded and adjusted accordingly after she reached a period of stability, or if [in] fact she ever comes to surgery.

The claimant discussed the designated doctor's report with Dr. M, and Dr. M disputed the report on her behalf within a few days after it was completed. In May 1995, the claimant asked for, but was not granted a benefit review conference (BRC). The claimant continued to treat with Dr. M throughout 1995. During March, 1996, she underwent diagnostic testing (a postmyelogram CT scan of the cervical spine) which was "positive for C3-4 disc bulging, C4-5 disc bulge/protrusion indenting the left ventral cord, C5-6 disc bulge/protrusion [which]

may very slightly indent the left ventral cord, and C6-7 disc protrusion." Surgery was contemplated and carried out on September 24, 1996, with an anterior cervical fusion with plates at C4-5, C5-6, and C6-7. Dispute Resolution Information System (DRIS) notes (admitted as Claimant's Exhibit No. 17) reflect that the claimant was engaged in the dispute resolution process concerning the nature and extent of her injuries throughout 1996.

The DRIS notes also reflect that the claimant retained an attorney in 1999, and that the attorney again raised the challenge to the designated doctor's report. A BRC was started on July 11, 2000, and continued, and a clarification letter was sent to the designated doctor on July 20, 2000. Dr. S indicated on November 9, 2000, that he wanted to reexamine the claimant. He did so and completed a TWCC-69 dated November 29, 2000, in which he changed the MMI date to the statutory MMI date (June 8, 1996), and awarded an IR of 29%. A BRC was held on May 1, 2001, and the CCH of June 6, 2001, ensued.

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that an MMI and IR report by a Commission-appointed designated doctor shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. The Appeals Panel has stated that the great weight of the other medical evidence requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including the treating doctor's report, is accorded the special presumptive status; that the designated doctor's report should not be rejected absent a substantial basis for doing so; and that medical evidence, not lay testimony, is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 960817, decided June 6, 1996; Texas Workers' Compensation Commission Appeal No. 94835, decided August 12, 1994.

The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's amended report. We have long recognized that a designated doctor may amend a certification of MMI and IR if he or she does so for a proper purpose and within a reasonable time. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000; Texas Workers' Compensation Commission Appeal No. 972233, decided December 12, 1997. The hearing officer specifically found that surgery was under active consideration on the date of statutory MMI, and there was good cause for the designated doctor to reexamine the claimant in November 2000, and provide an amended IR. He also concluded that under the circumstances present in this case, the reexamination of the claimant was done within a reasonable time. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's amended report in accordance with Sections 408.122(c) and 408.125(e) and in determining that the claimant reached MMI on June 8, 1996, with an IR of 29%. The hearing officer's decision is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

This case is significant because it deals with the unusual situation of an interlocutory

order issued by a hearing officer. As to the carrier's contention that the hearing officer does not have the power to render the interlocutory order which he did, we cite the carrier to Section 410.168(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.20 (Rule 142.20) which provide that the hearing officer may enter an interlocutory order for the payment of all or part of income benefits. Such an order may address either or both accrued and future benefits. The payment of accrued benefits based on an interlocutory order must include interest on any accrued unpaid benefits even if that is not included in the order. The carrier's position that interest was not properly ordered is incorrect. *See* Section 408.064.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
211 WEST 6TH STREET
AUSTIN, TEXAS 78701.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge