APPEAL NO. 012635-s
FILED DECEMBER 13, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 2, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) reached statutory maximum medical improvement (MMI) on August 7, 2000, with a 19% impairment rating (IR) pursuant to the designated doctor's second certification; and that the designated doctor's second certification issued on May 22, 2001, was for a proper purpose and within a reasonable time and is not against the great weight of the medical evidence. The appellant (carrier) appeals, asserting that the designated doctor did not amend his certification for a "proper reason" because the Intra-Discal Electro Thermal (IDET) procedure the claimant underwent was experimental in nature and not appropriate treatment for the claimant. The carrier further asserts that the designated doctor inappropriately amended the claimant's IR by giving him a rating under Table 49 (II)(E) of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) because IDET is not a surgical procedure. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and that the date of statutory MMI is August 7, 2000. The claimant testified that on _____, he sustained his compensable low and mid-back injury while repetitively lifting and loading boxes that weighed 40 to 50 pounds. The claimant testified that he underwent treatment with Dr. Y, and received two spinal injections which did not help. The record reflects that on March 16, 1999, the claimant was examined by Dr. O, a Texas Workers' Compensation Commission (Commission) designated doctor; that on April 19, 1999, Dr. O issued an initial certification placing the claimant at MMI as of March 16, 1999, with a 14% IR; that the claimant continued to receive treatment until it was determined that he needed to undergo an IDET procedure; that the claimant went through the Commission's spinal surgery second opinion process pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206) and received Commission approval for the IDET procedure on January 20, 2000; and that the claimant underwent the IDET procedure on February 18, 2000. The claimant testified that he did not feel any improvement until he was able to return to physical therapy, which was about four months after the procedure. The claimant stated that he now feels "100% better." The record shows that the claimant disputed Dr. O's initial certification on April 11, 2000, and that several letters of clarification were sent to him. Dr. O finally reexamined the claimant on May 15, 2001, and issued a second certification placing the claimant at MMI on August 7, 2000, with a 19% IR, 10% of which was awarded under Table 49(II)(E) of the AMA Guides.

On appeal, the carrier first asserts that the amendment of the claimant's date of MMI was not done for a proper reason because IDET procedures are experimental and the claimant was not a valid candidate for it.

We have long recognized that a designated doctor may amend a certification of MMI and IR 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. Whether a doctor has amended a report for a proper purpose and within a reasonable amount of time is essentially a question of fact. Texas Workers' Compensation Commission Appeal No. 960888, decided June 18, 1996. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The claimant submitted medical opinions from several different doctors, all of whom concurred with the appropriateness of the IDET procedure. The IDET procedure was approved by the Commission after going through the spinal surgery second opinion process as required by Rule 133.206. Additionally, the claimant testified to the beneficial results he has experienced as a result of the procedure. The hearing officer's determination that Dr. O amended his initial certification of MMI and IR for a proper purpose and within a reasonable amount of time is supported by sufficient evidence, and it 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Finally, the carrier asserts that the amended IR is improper because it awards a rating under Table 49(II)(E) of the AMA Guides. The carrier argues that since IDET procedures are not recognized as surgery by the Commission at the time of the amended rating, it could not provide the basis for use of Table 49(II)(E). The carrier relies on Advisory 2001-04 to support its position.

In Texas Workers' Compensation Commission Appeal No. 011557, decided August 7, 2001, we held that IDET is a surgical procedure, stating:

> The IDET procedure is performed on the spine. As the parties stipulated, and the literature in the record supports, it is a "surgical procedure." Neither the 1989 Act nor the rules define "spinal surgery." Dorland's Illustrated Medical Dictionary, 27th edition, defines "surgery" as: "1. That branch of medicine which treats diseases, injuries, and deformities by manual or operative methods. 2. The place in a hospital or doctor's or dentist's office where surgery is performed. 3. In Great Britain, a room or office where the doctor sees and treats patients. 4. The work performed by a surgeon." Plainly, the definition incorporates less invasive procedures than open operations involving the use of general anesthesia, and is broad enough to include procedures that would occur in a doctor's or dentist's office.

Our review of the records submitted on the IDET procedure shows it to involve introduction of a catheter into the disc space under local anesthesia, and then the

administration of heat with the objective of causing physical change in the disc. We do not agree with the carrier's contention that Advisory 2001-04 does not recognize IDET as being a surgical procedure. Advisory 2001-04 merely states that as of April 12, 2001, it is not spinal surgery for purposes of Rule 133.206. It further goes on to state that if the IDET procedure is performed in a hospital or at an ambulatory surgical care center, preauthorization is required pursuant to Rule 134.600(h)(1). This advisory was issued because it was determined that there were no existing scientific studies to support the use of the IDET procedure as a normal course of treatment, not because it was determined that it was not a surgical procedure. We find that Advisory 2001-04 is instructive in determining how to get the IDET procedure approved, but not instructive in determining whether or not the IDET procedure is surgery for purposes of the AMA Guides. The hearing officer's determination that the designated doctor's second certification that the claimant reached MMI on August 7, 2000, with a 19% IR is not against the great weight of the medical evidence and is affirmed.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge