APPEAL NO. 931071

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on October 20, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant's (claimant) correct impairment rating (IR) was seven percent in accordance with the certification of a Commission-selected designated doctor. Claimant appeals urging that the designated doctor be disqualified because of his bias and inconsistencies in three different reports rendered by him and claimant asks that he be given a fair assessment of his impairment. The respondent (carrier) asserts that the designated doctor's report is entitled to presumptive weight and that the claimant has failed to demonstrate that the great weight of the other medical evidence is to the contrary.

DECISION

Determining that there is an insufficient basis to hold that the great weight of the other medical evidence is contrary to the IR assessed by the designated doctor, we affirm.

The only issue in this case is the correct IR. Unfortunately, there are three different reports by the designated doctor and such repeated changes by a designated doctor do not instill confidence in any designated doctor or IR program. We have stated in prior decisions that a hearing officer or other Commission official should appropriately take early action to clarify or cause corrections to be made in a designated doctor's report when it is feasible and reasonably possible to do so expeditiously. Texas Workers' Compensation Commission Appeal No. 92595, decided December 21, 1992; *compare* Texas Workers' Compensation Commission Appeal No. 93932, decided November 29, 1993. Also, we have emphasized that a good and viable designated doctor program, a very important and significant step in the 1989 Act, is essential. *See* Texas Workers' Compensation Commission Appeal No. 93105, decided March 26, 1993; Texas Workers' Compensation Commission Appeal No. 93062, decided March 1, 1993. And, although we have stated that a designated doctor may, within a reasonable time, change or amend his report for proper reason, repeated changes may call into question the efficacy and stability of this very important provision of the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 93831, decided October 29, 1993; Texas Workers' Compensation Commission Appeal No. 93837, decided October 29, 1993; Texas Workers' Compensation Commission Appeal No. 93328, decided June 2, 1993.

The issue for our decision is whether the evidence is sufficient to support the determination of the hearing officer which accorded presumptive weight to the third and final report of the designated doctor or whether his determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *See* In re King's Estate, 244 S.W.2d 660 (Tex. 1951). The claimant sustained a work-related back injury on July 5, 1991. His treating doctor, (Dr. V), determined that the claimant reached maximum medical improvement (MMI) on August 7, 1992, with an IR of 25%. The carrier disputed the rating and arrangements were made for the claimant to be seen by a carrier-selected doctor who rendered an IR of six percent according to the testimony of the claimant

(no report was offered into evidence). The claimant disputed that rating and arrangements were made for the claimant to see the Commission-selected designated doctor, (Dr. M). In his first report of November 20. 1992, Dr. M determined a 24% IR but did not certify MMI or report his findings on a Texas Workers' Compensation Commission Form 69 (TWCC-69). Further, the carrier complained about the validity of the range of motion (ROM) measurements. The Commission requested that Dr. M perform a new evaluation and that report, dated June 8, 1993, (no explanation for the delay) determined the MMI date to be October 27, 1992, with a 14% IR. Dr. M determined that lumbar flexion and extension measurements were invalid and did not assess any rating for this although it did not appear that he attempted multiple measurements in making his determination. Dr. V disagreed with several areas of Dr. M's assessment and the claimant requested that Dr. M be directed to reaccomplish the ROM testing. The Commission requested that Dr. M review Dr. V's comments and reaccomplish his impairment evaluation of the claimant. Dr. M did so and rendered a third report which certified that the claimant reached MMI on October 27, 1992, with a seven percent IR. Dr. M's report discusses and gives his reasoning for his review and reassessment of the rating, points out that he used the correct version of the Guides to the Evaluation of Permanent Impairment, Third Edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), explained his invalidation of the lumbar ROM measurements, noted a mistake he made in his previous report, and opined that there was symptom magnification by the claimant.

The hearing officer indicated that he found the explanations in Dr. M's third report to be "clear, unequivocal, and based on the AMA Guides, Third Edition, Second Printing." He also pointed out the only medical evidence contrary to Dr. M's report was the assessment of Dr. V and his comments on Dr. M's report. Although there was testimony concerning the evaluation and assessment of the six percent IR by the carrier-requested doctor, that report was not offered into evidence. There is nothing to indicate it was contrary to Dr. M's report. Based upon this state of the evidence, the hearing officer determined that Dr. M's final report was entitled to presumptive weight in accordance with Section 408.125 and found that the correct IR to be seven percent with an MMI date of October 27, 1992. From our review of the evidence, we do not find a basis to conclude that the hearing officer's findings are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, *supra*; Cain v. Bain, 709 S.W.2d 175 (Tex.1986). While, as we have stated, it is unfortunate that three different evaluations and reports of the designated doctor were occasioned in this case,

and over an unexplained extended period of time, we do not find any basis to conclude that the designated doctor was biased against the claimant or that he otherwise acted improperly in rendering his professional opinion in this case. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge