APPEAL NO. 950052
FILED FEBRUARY 17, 1995

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing (CCH) was held. The hearing officer determined that the appellant's (claimant) maximum medical improvement (MMI) date and impairment rating (IR) were January 7, 1994, and four percent, respectively, as determined by a Texas Workers' Compensation Commission (Commission) selected designated doctor. She also determined that the Commission had the authority to select a chiropractor as the designated doctor. The claimant appeals urging that a chiropractor "should not be allowed to render an IR where the treating doctor is an orthopedic surgeon" and that the designated doctor's IR and MMI is against the great weight and preponderance of the evidence. The respondent (carrier) urges that there is nothing to preclude the Commission from selecting a chiropractor as the designated doctor and asks that the decision be affirmed.

DECISION

The decision is affirmed.

There was no dispute that the claimant sustained a work-related back injured (not requiring surgery) on _____. She subsequently treated with a (Dr. V), a chiropractor, who over the course of treating her referred her to a number of other medical doctors for a battery of different diagnostic tests. In any event, one doctor assessed an MMI date of "09-09-93 with a 0% IR." In October, Dr. V referred the claimant to the (Provider) for an IR which resulted in a nine percent rating by a physical therapist. Because of a dispute, the Commission selected (Dr. R), a chiropractor, as the designated doctor. He examined the claimant and rendered an MMI date of January 7, 1994, with a four percent IR. In an Employee's Request to Change Treating Doctors (TWCC-53), approved on January 4, 1994, the claimant requested to change treating doctors from Dr. V to (Dr. R) "to have an orthopedic surgeon in charge of my care instead of a chiropracter [sic])" We note that Dr. R's letterhead indicates that he is a "Diplomate American Board of Neurological Surgery." Nonetheless, Dr. R commenced treating the claimant and subsequently rendered a report certifying MMI as "5-25-94" with a 14% IR.

Regarding the issue added at the CCH at the request of both parties and approved by the hearing officer concerning the appointment of a chiropractor as the designated doctor, the Appeals Panel has previously addressed this specific issue. Texas Workers' Compensation Commission Appeal No. 941752, decided February 6, 1995. In that case we stated:

> We would agree that a finder of fact should be free to consider the qualifications and medical specialty of all doctors, including designated

> doctors, in the evaluation of their opinions. However, there is no basis in the law for rejecting the report of a doctor simply because he or she is a chiropractor. The definition of "doctor" in the 1989 Act is contained in Section 401.011(17), and expressly includes a doctor of chiropractic (as well as other practitioners who are not medical doctors). The definition of "designated doctor" in Section 401.011(15) does not exclude any practitioner defined as a "doctor" from serving as such, nor require a particular specialty. Texas Workers' Compensation Commission Appeal No. 93105, decided March 26, 1993. Without some medical evidence as to whether, or how, Dr. R did not correctly use the AMA Guides, we cannot credit claimant's argument the Dr. R's opinion was not entitled to presumptive weight because of his type of license.

Of course, the use of the AMA Guides (Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides)) by a doctor (or for that matter other health care provider whose assessment is adopted by a doctor and becomes his own) without regard to his area of practice, experience or expertise is one thing; however, the determination of MMI involves another matter. The definition of MMI in Section 401.011(30) is either the expiration of 104 weeks or "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonable be anticipated." (Emphasis ours.) The question arises whether a particular "doctor" coming within the definition of the statute necessarily has the requisite medical expertise to determine if MMI has been reached, and if so on what date. However, without any rules, guidance or policy, it becomes an *ad hoc* determination in each case. This is one of the concerns that has caused the Appeals Panel to repeatedly state that a good and viable designated doctor program that is "credible, fair and widely accepted" is essential under the scheme of the 1989 Act. Texas Workers' Compensation Commission Appeal No. 93062, decided March 1, 1993; Texas Workers' Compensation Commission Appeal No. 93105, *supra*; Texas Workers' Compensation Commission Appeal No. 94078, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 941087, decided September 26, 1994. We are not aware of any rules, guidance or policy which could preclude some of the disputes arising in the designated doctor area.

In Appeal No. 93062, *supra*, we held that in that case a general practitioner medical doctor was an acceptable designated doctor and his assessment of MMI and IR where accorded presumptive weight where there were contrary evaluations by orthopedic specialists. We noted that a particular degree of specialty on the part of a designated doctor is not generally required but pointed out it is more a matter of weighing the designated doctor's report in the context of the totality of medical evidence. Compare Texas Workers' Compensation Commission Appeal No. 94315, decided May 2, 1994, were we stated a specialist might be appropriate in a case involving the "esoteric nature of spinal cord injuries." In Appeal 941752, *supra*, a case involving a back injury (not requiring

surgery), the designated doctor was a chiropractic doctor with contrary opinions by two orthopedic specialists, we upheld the hearing officer's according presumptive weight to the designated doctor. This is an extension of the situation in Appeal No. 93062 as the conflict in opinions here does not involve only medical doctors; rather, two different disciplines are involved. However, given the circumstances where the injury involved, as here, is the back, generally one of the primary areas of practice of a chiropractic doctor, and where the evidence does not support a conclusion that the designated doctor did not follow accepted medical procedure in his evaluation of the injury or correctly used the AMA Guides, we find no solid basis to hold that Dr. R was not an appropriately appointed designated doctor under the circumstances. A different result might well be reached where other than a medical doctor is called upon to make evaluations outside his particular area or discipline.

We have reviewed all the medical evidence in the record and conclude there is sufficient evidence to support the hearing officer's determination that the great weight of the other medical evidence was not contrary to the designated doctor's report. Section 408.125(e); Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Therefore, there was no error in the hearing officer's determinations that MMI occurred on January 7, 1994, and that the correct IR was four percent.

Accordingly, the decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge