APPEAL NO. 980313
FILED MARCH 25, 1998

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 January 7, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were the date of maximum medical improvement (MMI) and the claimant's impairment rating (IR). The hearing officer's decision and order reflects a determination of MMI having been reached on January 21, 1997, with an IR of eight percent as certified by a designated doctor. On a Motion to Correct Clerical Error, an order was issued on February 5, 1998, to reflect the designated doctor certified that the claimant reached MMI on April 8, 1997, with an IR of 10%. The claimant appeals, urging that she has not reached MMI as she is contemplating surgery, points out other errors in the hearing officer's decision, and argues that the designated doctor did not follow proper procedures in arriving at his rating and did not consider that she may have surgery. Claimant asks that the 19% IR of her treating doctor be accepted as her IR. The respondent (carrier) replies that there is sufficient evidence to support the determinations of the hearing officer, that there is no medical evidence to show that the designated doctor did not render his MMI and IR in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) or that the presumption accorded his report has been overcome, and urges that claimant is now only considering surgery.

DECISION

Affirmed.

The claimant, who worked sewing garments for the employer, sustained a repetitive trauma injury to her left shoulder and arm on _____. Contrary to the finding of fact in the Decision and Order, her treating doctor certified that she reached MMI on August 18, 1997, with a 19% IR, which included ratings for loss of range of motion (ROM) and specific disorder. Her treating doctor disagreed with a report from a designated doctor. In his narrative, the treating doctor noted that the claimant had been examined by a required medical examination doctor who determined MMI had been reached on April 8, 1997, and assessed a 17% IR; stated that the claimant was treated conservatively and has made improvement; and reflected that she was offered arthroscopic surgery but did not desire it. The claimant was examined by a Texas Workers' Compensation Commission-selected designated doctor on June 23, 1997, who certified MMI on April 8, 1997, and assessed a 10% IR consisting of ROM and ulnar nerve sensory deficits. The designated doctor states in his report that he based his opinions on "clinical findings, AMA [ROM] studies and review of diagnostic studies and medical records" and that his IR was calculated in accordance with the correct

version of the AMA Guides. His ROM measurement work sheets were attached to his report.

The carrier introduced a document from a "Consultative Services" which purported to evaluate the 10% IR by the designated doctor and stated that "[a]ccording to the measurements provided and percentages allotted, I find that there are no discrepancies and the 10% WP is correct" but also noted that the evaluator could have allotted for specific disorders. In a letter from the claimant's treating doctor, dated September 8, 1997, he states he disagrees with the designated doctor's IR but states that "[c]ertainly, there can be differences in examiners view points regarding an [IR] . . . ."

The claimant testified that she is now considering surgery and is seeking a second opinion to make her decision. She states that she does not agree that she is at MMI because she does not feel any better and has spasms. She states that the designated doctor did not "do as much as the other doctors" in rendering his report and that she believes the IR should be higher than 10%. She states she is concerned that, if she has surgery, she will not be entitled to income benefits.

The hearing officer in accepting the designated doctor's MMI and IR found that there was "insufficient medical evidence contrary to the opinion of the designated doctor to overcome the presumption to which his opinion is entitled." On appeal, claimant urges that the designated doctor did not properly follow the steps or apply the AMA Guides in determining impairment of a body part affected by pain, loss of strength, and loss of sensation and did not consider the fact that she may have surgery on her arm.

As indicated, there was some professional disagreement regarding the claimant's IR, all doctor's having found MMI, albeit on two different dates. It is not uncommon for expert opinions to vary and that is one purpose of cloaking a designated doctor's opinion with uniquely presumptive weight. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996; and Texas Workers' Compensation Commission Appeal No. 950166, decided March 14, 1995. We have also stated the AMA Guides do not provide rigid parameters which supersede the ability of the physician to exercise clinical judgment and that the designated doctor's report includes not just the numbers, but the judgments set forth in his narrative report. Texas Workers' Compensation Commission Appeal No. 970313, decided March 25, 1997; Texas Workers' Compensation Commission Appeal No. 961097, decided July 17, 1996. From our review of the medical evidence, there appears to be substantial compliance with the AMA Guides by the designated doctor in reaching his medical judgment. Texas Workers' Compensation Commission Appeal No. 93682, decided September 20, 1993. We also do not conclude that the hearing officer's determination to accept the report of the designated doctor and award benefits accordingly was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Nor do we find that the possibility

of future surgery in this case is a sound basis to reject the designated doctor's report. *See* Texas Workers' Compensation Commission Appeal No. 93479, decided July 29, 1993.

The decision and order, as corrected, are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge