APPEAL NO. 990065

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 15, 1998, a hearing was held. She determined that the appellant's (claimant) compensable left knee and left hip injury did not extend to his lumbar or thoracic spine; she also determined that the respondent (carrier) timely disputed the compensability of injury to the lumbar/thoracic spine. In addition, with the consent of the parties, she added the issue of whether the Texas Workers' Compensation Commission (Commission) abused its discretion in sending claimant to the designated doctor for a second examination and found that the Commission abused its discretion in conducting the second examination. Finally, she determined that the proper impairment rating (IR) for claimant is the 14% the designated doctor provided after the first examination and to which he adhered thereafter upon reviewing additional medical records. Claimant asserts that the Commission did not abuse its discretion in having claimant examined a second time, citing the designated doctor's willingness to do a second examination and that it was "clearly within the BRO's [benefit review officer] duties to order the repeat examination"; claimant also stated that the IR was not 14% but was 17% as found by his treating doctor. The determinations as to extent of injury and timely dispute were not appealed and have become final. *See* Section 410.169. Carrier replied that the decision should be affirmed.

DECISION

We affirm.

Claimant hurt his knee when his left foot slipped off the shovel he was using to dig, while working for (employer). He said he was told he hyperextended his knee. Thereafter he had surgery to the left knee in July 1995 by Dr. L to repair a fracture of a femoral condyle and chondromalacia. Then in January 1996, Dr. G operated again on the same knee to debride a thickened synovial band, and bone was drilled to "allow elaboration of scar tissue." In April 1996, Dr. G referred claimant to Dr. C for pain evaluation and control.

Dr. C provided an IR of 17% in August 1997, which included 5% for reflex sympathetic dystrophy (RSD). The carrier disputed this IR and a designated doctor, Dr. F, was appointed. He evaluated claimant on October 13 and 14, 1997, and provided an IR of 14%. In this IR Dr. F did not refer to RSD. In February 1998, the Commission wrote to Dr. F providing additional medical records of Dr. C and asked if they affected his IR. In March 1998, Dr. F replied that he received the records and previously had medical records provided by the carrier, but stated that he did not rate the RSD because he found no "clinical evidence" of RSD, noting no evidence of skin changes or hair loss and that the bone scan for the left leg was "negative." He also noted that claimant had multiple sympathetic nerve blocks without benefit. He said he did not doubt the diagnosis but was stating his "own clinical findings." He concluded by saying that his 14% IR was fair and accurate.

Later, Dr. F did reexamine claimant and found 20% IR, but an additional amount was added for lumbar IR, which was found not to be part of the compensable injury, and that determination was not appealed. Dr. F never assessed any IR for RSD. The hearing officer was sufficiently supported by the evidence in treating Dr. F's initial IR as the designated doctor's IR which would be entitled to presumptive weight unless the great weight of other medical evidence was contrary thereto.

The issue of abuse of discretion relative to the Commission sending claimant to Dr. F for another examination, while appealed, does not affect the outcome of this case. With an unappealed determination that the compensable injury did not extend to the lumbar area, Dr. F's reexamination, even if provided for a proper reason, included substantial IR for the lumbar area and could not be found to be the designated doctor's IR which was entitled to presumptive weight. Nevertheless, claimant asserts that Dr. F did not indicate unwillingness to repeat his examination. Any designated doctor's indication of cooperation is always helpful, but the designated doctor's expression of willingness to reexamine a claimant does not determine whether a proper reason exists for a reexamination. Similarly, while a BRO or other Commission officer has an ability to send a claimant back to a designated doctor, there must be a proper reason for doing so. With the records showing that added medical records had already been provided to Dr. F and thereafter he did not change his opinion, the hearing officer was sufficiently supported by the absence of other evidence, indicating a proper reason for a reexamination, in finding that the Commission did abuse its discretion.

Claimant also states that Dr. F's report is not entitled to presumptive weight because he did not rate the RSD. Dr. F showed by his correspondence that he considered the RSD and stated that he did not doubt the diagnosis. He steadfastly stated that his examination did not find a basis to assign any IR for the RSD, just as he considered the compensable hip injury but did not assign any IR for it. Just because a claimant has a compensable injury or because he has received treatment for a certain condition does not mean that an IR above zero must be assigned. The designated doctor assigns IR on the basis of objective clinical or laboratory findings. *See* Sections 408.122 and 408.125. It is possible to have a compensable injury for which no objective findings of permanent impairment are present at the time the designated doctor evaluates a claimant. *See* Texas Workers' Compensation Commission Appeal No. 93539, decided August 12, 1993. In addition, claimant states that Dr. F did not examine his knee, but Dr. F's report indicates that he did. This, too, was a matter for the hearing officer to consider.

The findings of fact disputed on appeal, which addressed whether claimant should have been reexamined by Dr. F, which addressed Dr. F's IR of 14% as entitled to presumptive weight, and which said that the designated doctor's IR was not contrary to the great weight of other medical evidence, are sufficiently supported by the evidence.

Finding that the evidence sufficiently supports the decision and order, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Elaine M. Chaney
Appeals Judge