APPEAL NO. 990664

A contested case hearing (CCH) was originally held on July 31, 1998, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 982020, decided October 2, 1998, the Appeals Panel reversed the decision of the hearing officer and remanded for the hearing officer to seek clarification from the designated doctor, Dr. B, regarding the respondent's (claimant) whole person impairment rating (IR), including her upper extremities and her lumbar spine. The hearing officer did not convene another hearing and rendered another decision on March 9, 1999. He made the following findings of fact and conclusion of law:

**FINDINGS OF FACT**

2. On July 1, 1998, [Dr. B] re-examined the Claimant [Texas Workers' Compensation Commission] as the Commission designated doctor and physically examined the Claimant, reviewed various medical reports and examined all of the Claimant's injured body parts including the lower back.

3. After his evaluation, [Dr. B] rendered a 14% [IR].

4. On February 1, 1999, [Dr. B] again examined the Claimant to provide an [IR] for the upper extremities as requested by the appeals panel.

5. After his evaluation, [Dr. B] rendered a 24% [IR].

6. All of the designated doctor's reports were reviewed and considered.

7. The designated doctor's amended report is given presumptive weight.

8. The great weight of the other medical evidence is not contrary to the designated doctor's amended report.

**CONCLUSION OF LAW**

2. The Claimant reached MMI [maximum medical improvement] on September 23, 1995, with a 24% [IR].

The appellant (carrier) appealed and requested that the decision be reversed and a new decision rendered finding an IR of 12% as originally found by the designated doctor. The carrier contended that that amendment by Dr. B was not proper because the issue of IR had not been raised or resolved within a reasonable period of time following the original assessment, and that Dr. B had already given his opinion that the injury did not cause the claimant's low back condition, a discretionary opinion that he was entitled to make in spite

of the prior CCH determination that the claimant's back had been injured by the deep fiber massage therapy. The claimant responded that the evidence is sufficient to support the determination that her IR is 24%, and requested that the decision of the hearing officer be affirmed.

DECISION

Affirmed.

On November 29, 1995, Dr. B evaluated the claimant's upper extremities and assessed a 12% IR. The hearing officer directed Dr. B to reevaluate the claimant and include impairment for the claimant's lumbar back. On July 1, 1998, Dr. B evaluated the claimant's back and assessed a 14% IR. Dr. B did not address impairment for the claimant's upper extremities in his July 1, 1998, report. Rather, Dr. B's July 1, 1998, report assessed an IR for the lumbar spine only. On February 23, 1999, Dr. B reexamined the claimant. Dr. B stated that the original examinations in 1995 and 1998 accurately reflected the condition in the claimant's upper extremities and lumbar spine respectively, and he combined the two values of 14% and 12%, rendering a whole person physical impairment of 24% for both the upper extremities and the lumbar spine.

The carrier asserts that Appeal No. 982020, *supra*, was incorrect when it stated that "[t]he parties stipulated that the claimant sustained a compensable back injury on _____." We agree that no such stipulation was entered. However, Appeal No. 982020 correctly states that in an earlier proceeding, the Appeals Panel affirmed the hearing officer's determination that the claimant's _____, compensable injury extends to her low back. Texas Workers' Compensation Commission Appeal No. 950954, decided July 26, 1995. Regardless of Dr. B's opinion concerning whether the claimant sustained a compensable lumbar spine injury, the Commission determined the claimant's low back condition was compensable.

The carrier asserts that the claimant did not timely pursue a revised IR. The Commission wrote a letter of clarification to Dr. B on January 22, 1996, requesting his opinion on whether or not impairment should have been included for a low back injury. Dr. B responded on January 26, 1996, and stated:

> If additional documented information could be produced such as the initial report by [Dr. Z], initial Workman's compensation report indicating an injury and lower back pain, or other documented information at or shortly after the time of her injury [o]f _____ indicating lower back pain, I would be happy to review her rating in regards to that area.

The carrier argues that no further activity occurred concerning the IR until May 27, 1997, 15 months later, when the claimant's attorney requested that the Commission seek further clarification from Dr. B. It is unclear from the record what, if any, efforts were made to obtain clarification from Dr. B during this time period; however, the issue of Dr. B assigning

an IR for the low back was raised within a month of the designated doctor's original assessment on January 2, 1996, of a 12% IR.

We have held that "[a] designated doctor may, with proper reason, and in a reasonable amount of time, amend his original report of MMI and IR, for various reasons which can include, but are not limited to, the need for surgery." *See* Texas Workers' Compensation Commission Appeal No. 941168, decided October 14, 1994. We have found that a designated doctor's amending to rate the entire injury is a proper reason for amendment. Texas Workers' Compensation Commission Appeal No. 94435, decided May 27, 1994. The report may be amended where there are incomplete or erroneous facts when the first report is rendered that are subsequently taken into account in amending the report. Texas Workers' Compensation Commission Appeal No. 941600, decided January 12, 1995. Whether a doctor has amended his report for a proper reason and within a reasonable amount of time are essentially questions of fact. Texas Workers' Compensation Commission Appeal No. 960888, decided June 18, 1996.

The carrier cites several Appeals Panel decisions in support of its argument which are distinguishable from the facts of this case. We note that in Texas Workers' Compensation Commission Appeal No. 980355, decided April 6, 1998, almost three years passed since the first IR was rendered by the designated doctor before the benefit review officer wrote to him, and more than three years passed before the designated doctor amended his IR. In Texas Workers' Compensation Commission Appeal No. 981988, decided October 8, 1998, we concluded that a purported amendment by the designated doctor was not done in a timely fashion where the claimant disputed the date of MMI first given by his treating doctor in a report of April 15, 1997, on January 30, 1998, after the Commission wrote him in March 1997 saying that only IR was in issue. The claimant also did not question the Commission's second letter in March 1998 about a reexamination for IR only. In the case before us, clarification was sought on January 22, 1996, within one month of the designated doctor's original assessment. A subsequent letter of clarification was sent to Dr. B on June 16, 1998, and only after additional clarification was sought on February 1, 1999, did Dr. B issue an IR for the entire compensable injury.

While the hearing officer did not expressly make findings of fact concerning whether the designated doctor's report was amended for a proper reason and within a reasonable time, the hearing officer gave presumptive weight to the designated doctor's amended report and found that the great weight of the other medical evidence is not contrary to the designated doctor's amended report. We can infer from those findings that the hearing officer found that the designated doctor's amendment was done for a proper reason and within a reasonable time.

Section 408.125(e) provides in part that the report of the designated doctor selected by the Commission is entitled to presumptive weight and that the Commission shall base the IR on such report unless it is contrary to the great weight of the other medical evidence. In this case, the hearing officer considered all of the medical evidence presented and did not find that the other medical evidence rose to the level of great weight against the 24% IR

assigned by Dr. B. The hearing officer determined that the amended report of the designated doctor is entitled to presumptive weight, that the great weight of the medical evidence is not contrary to the amended report of the designated doctor, and that the claimant has a 24% IR. These determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge