APPEAL NO. 990739

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 March 3, 1999. Addressing the sole disputed issue, he determined that the appellant's (claimant) correct impairment rating (IR) was 14% as certified by Dr. E) in his first Report of Medical Evaluation (TWCC-69). The claimant appeals this determination, expressing his disagreement with it and contending that his correct IR was 18% as certified by Dr. E in an amended report. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury to his upper extremities (including both wrists, both elbows and both shoulders) on _____. The parties agreed that he reached maximum medical improvement (MMI) on February 14, 1997, by operation of law. Section 401.011(30)(B).

On February 18, 1997, Dr. E, the designated doctor, completed a TWCC-69 in which he assigned a 14% IR. Attached to this TWCC-69 were pages of raw test data, but little indication of how this data yielded the 14% IR or what the components of this IR were. The claimant testified that he did not recall when he decided to challenge this IR, but said he did so "right after" he received it by speaking with someone at the Texas Workers' Compensation Commission (Commission).

Apparently, a benefit review conference (BRC) was held in August 1998. This resulted in a letter from the benefit review officer (BRO) on August 13, 1998, to Dr. E in which the BRO asked Dr. E to again review his records and attached letters from Dr. D, the treating doctor. Most of those documents consisted of Dr. D's assertion that the claimant was "100% and totally disabled" and Dr. D's challenging the need for a carrier-requested test of the claimant. One, a letter of July 14, 1997, from Dr. D to the Commission, complained about Dr. E's methodology in arriving at the 14% IR. Dr. E then reexamined the claimant on November 30, 1998, and completed an amended TWCC-69 in which he assigned an 18% IR. Unlike the first TWCC-69 of Dr. E, the second provides information on how the 18% IR was calculated.

The claimant's position both at the CCH and on appeal is that statutory presumptive weight pursuant to Section 408.125(e) should be given to the amended report because he did challenge Dr. E's first report "at an early date" based on the inadequacy of his range-of-motion testing. The hearing officer found that the reasons for sending the claimant back to Dr. E a second time were "insufficient" (Finding of Fact No. 2) and that the amount of time between the two examinations was "unreasonable." (Finding of Fact No. 3). He therefore considered the amendment improper and gave presumptive weight to the first report.

Although no finding was made identifying the reasons why the claimant was returned to Dr. E, we infer from his discussion of the evidence that the hearing officer considered the reason to be an argument over the accuracy of Dr. E's range-of-motion figures. The hearing officer considered this to be no more than a professional disagreement.

The Appeals Panel has stated that a designated doctor may amend a report for a proper reason within a reasonable amount of time. Texas Workers' Compensation Commission Appeal No. 960960, decided July 3, 1996. Proper reasons to amend a report typically include post-certification surgery, a substantial change of condition, or lack of significant information. *See* Texas Workers' Compensation Commission Appeal No. 970885, decided June 26, 1997. We have also held that it may be appropriate to return a report to the designated doctor when clarification is necessary to ensure compliance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). *See* Texas Workers' Compensation Commission Appeal No. 960981, decided July 8, 1996. The claimant, Dr. D, and Dr. E all acknowledge that further surgery is not indicated in this case. Nor was there evidence that Dr. E's ratings were based on some significant lack of knowledge about his medical condition. Similarly, it is unclear from the BRO's letter to Dr. E what clarification was sought and why. In our opinion, the evidence supports that the only basis for the reexamination was Dr. D's questioning of the accuracy of Dr. E's range-of-motion testing, thus opening the door for a second look at range of motion. The hearing officer properly characterized this as a professional disagreement between the two doctors that was not a proper reason for a reexamination by Dr. E.[1]

The claimant also asserts that he sought to dispute Dr. E's IR within a reasonable period of time. The hearing officer found that time period unreasonable based simply on the elapsed time between the first and second examinations. This approach is arbitrary, we believe, because it fails to consider the actions of the parties taken to establish the need for this second appointment. The hearing officer in his discussion of the evidence also appears to consider the delay unreasonable based on Dr. D's July 14, 1997, letter and the BRO's letter of August 13, 1998, to Dr. E. Such a finding, to the extent that it can be implied, fails to consider that the July 14, 1997, letter was to the Commission and seemingly ignores the question of what practical ability the claimant had to speed up Commission action. Given our affirmance of the finding that Dr. E did not amend his TWCC-69 for a proper reason, any error in finding the amendment not reasonably timely is essentially harmless.

[1]Some question was raised at the CCH that the claimant was not at MMI as of Dr. E's first examination. We stress that MMI in this case was by operation of law and not, as Dr. E conceded, otherwise medically supportable. Under these circumstances, the assignment of an IR could not be indefinitely postponed pending a course of medical treatment, however long that may be. Texas Workers' Compensation Commission Appeal No. 980999, decided June 29, 1998.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge