

## APPEAL NO. 991494

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was commenced on January 25, 1999. The record was left open for additional comment and clarification by the designated doctor. After an exchange of correspondence with the designated doctor, the CCH was briefly reconvened on June 25, 1999, with additional hearing officer exhibits being admitted. The parties waived closing argument and the record was closed. With regard to the only issue before her, the hearing officer determined that appellant's (claimant) impairment rating (IR) was 11%, as assessed by the designated doctor in an amended report.

Claimant appeals, contending that her IR "should be higher than 11%," and that the designated doctor had originally assessed a 14% IR and then added five percent more for depression to make a total 18% IR. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds that there is "nothing in the law to prevent the designated doctor from amending or revising his prior opinion" and that the designated doctor had answered all of the questions posed him "ad nauseum." Carrier urges affirmance.

### DECISION

Affirmed.

The medical evidence establishes that claimant was injured on \_\_\_\_\_, when she was struck by a forklift while standing on a loading dock. Claimant sustained injuries to her neck and lower back. The parties stipulated that claimant sustained a compensable injury (initially the injury only encompassed the neck and lower back but subsequently the parties agreed that the injury included a "psychological condition" which included depression). The parties also stipulated that claimant reached maximum medical improvement on March 5, 1996; that Dr. R was the Texas Workers' Compensation Commission (Commission)-selected designated doctor; that Dr. R assessed a 14% IR on April 24, 1996; that Dr. W was the carrier-selected doctor; and that Dr. W assessed a zero percent IR on March 5, 1996.

Dr. W, in his March 5, 1996, report, noted an MRI scan which found "mild cervical spondylosis at C6-7 with small left paracentral disc herniation causing only minimal deformity of the thecal sac." Dr. W opined that the bulging disc was "not clinically significant," that Waddell's signs were positive, that claimant was getting no benefit out of chiropractic treatments, and that range of motion (ROM) was either normal or due to voluntary restriction and assessed the zero percent IR.

Dr. R, in assessing his April 24, 1996, 14% IR found "significant psychological overlay" but did not give a rating for that; gave a six percent impairment from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated

February 1989, published by the American Medical Association (AMA Guides) without specifying which section; and gave a nine percent impairment for cervical loss of ROM (having invalidated lumbar ROM). Dr. R found no neurological deficit and used the combined values table to arrive at the 14% IR. Dr. C, another carrier doctor, apparently did a peer review of Dr. R's April 24th report. In a report variously dated March 20, May 10, and May 20, 1996 (probably the May 20, 1996, date is correct with the other dates being typographical errors), Dr. C said the cervical and lumbar findings were degenerative, with zero percent for ROM and neurological impairment which should result in a zero percent whole person IR. Dr. C noted that Dr. R's ROM measurement "failed to meet intertrial validity requirements. . . ." That review was provided to Dr. R who responded by letter dated June 20, 1996, explaining his process, agreeing that "the MRI findings were insignificant" and agreeing that the cervical and lumbar ROM measurements should have been invalidated. Dr. R amended his IR stating that claimant still merited a six percent cervical impairment based on Table 49, Section IIC of the AMA Guides. Fairly clearly, Dr. R did not consider any impairment for claimant's mental condition or depression. Although the hearing officer references an October 6, 1997, response by Dr. R to a Commission inquiry, we do not find any such report or letter in the exhibits admitted at the CCH.

The CCH was convened on January 25, 1999, at which time carrier accepted that claimant's psychological condition resulted from the compensable injury and should have been rated. The hearing was recessed to allow the hearing officer to obtain an amended report from the designated doctor. By letter dated January 26, 1999, the hearing officer wrote Dr. R, noting Dr. R's April 24, 1996, 14% IR and advising Dr. R to include a "psychological condition, including depression" in his rating. Dr. R replied by letter dated February 11, 1999, agreeing that claimant "merits impairment for this depression," citing "Chapter 4, Table 1B, mild to moderate disturbance under unusual stress" and assigning a five percent whole person IR for that condition. Dr. R goes on to say that, with his original 14% plus the additional five percent impairment for depression, the "total impairment is 18% impairment of the whole person." A Report of Medical Evaluation (TWCC-69) reflecting the 18% IR is attached. In a letter dated April 21, 1999, the hearing officer wrote Dr. R calling his attention to the fact that Dr. R had revised his 14% IR to six percent after invalidating ROM per his June 20, 1996, report. The hearing officer asked for clarification whether the additional five percent impairment for depression is to be added to the 14% IR of April 24, 1996, or the amended six percent IR of June 20, 1996, including several of the prior reports. Dr. R replied by letter of May 8, 1999, stating that an incorrect TWCC-69 had been sent out and concluded:

Again, 14% impairment of whole person is incorrect and that should originally have been 6% impairment of whole person related to cervical diagnosis. Then the 5% impairment of whole person from the psychological diagnosis of depression is combined to equal 11% impairment of whole person.

The hearing officer found claimant's IR to be 11% and claimant appeals, contending it "should be higher than 11%" stating that the "medical evidence and claimant's testimony

clearly establishes” that claimant has an 18% IR. We disagree. The evidence, as recited above, clearly established that Dr. R rescinded his 14% IR in his report of June 20, 1996, when it was pointed out to him that his ROM figures failed to meet validity requirements. Subsequent use of the 14% IR was incorrect or in error as explained by Dr. R in his May 8, 1999, correspondence. Section 408.125(e) provides that the report of the designated doctor is entitled to presumptive weight and that the Commission shall base the IR on that report unless it is contrary to the great weight of the other medical evidence. The Appeals Panel has frequently referred to the unique status held by the designated doctor in the Texas workers’ compensation process and has held that a mere difference in the professional judgment of doctors will not generally constitute the great weight of the other medical evidence against the designated doctor’s report.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer’s determinations unless they are 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). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge