APPEAL NO. 991996

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 23, 1999. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is eight percent in accordance with the amended report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant contends that the hearing officer erred in giving presumptive weight to the designated doctor's amended report, arguing that the designated doctor's amendment of his rating was not made for a "proper purpose." The claimant asks that we reverse the hearing officer's decision and render a new decision that his IR is 14%, as the designated doctor certified in his initial report. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The facts in this case are undisputed. The claimant is a fire fighter for the self-insured city. He sustained a compensable back injury on _____. He treated with Dr. W, a chiropractor, and was released to return to full duty on October 1, 1998. In a Report of Medical Evaluation (TWCC-69) dated October 19, 1998, Dr. R, who was identified as a doctor for the city, certified that the claimant reached maximum medical improvement (MMI) on October 1, 1998, with an IR of zero percent. Dr. R's certification was disputed and Dr. M was selected by the Commission to serve as the designated doctor. Dr. M examined the claimant on December 21, 1998, and in a TWCC-69 dated December 23, 1998, Dr. M certified that the claimant reached MMI on November 5, 1998, with an IR of 14%. The 14% IR was comprised of seven percent under Table 49, II-C of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and eight percent for loss of lumbar range of motion (ROM).

In a January 15, 1999, letter, the self-insured asked the Commission to seek clarification from Dr. M of his IR. Specifically, the self-insured noted that the claimant had been assigned a seven percent rating under Table 49, II-C for an intervertebral disc or other soft tissue lesion that is "[u]noperated, with medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasms, or rigidity associated with moderate to severe degenerative changes on structural tests, including unoperated herniated nucleus pulposus, with or without radiculopathy" and asserted that the claimant had not had medically documented pain for six months. On February 16, 1999, the Commission forwarded the self-insured's letter to Dr. M. In a March 9, 1999, letter to the Commission, Dr. M responded to the request for clarification, as follows:

> I received your letter dated 2/16/99, regarding my Designated Doctor Examination of [claimant] performed on 12/21/98.

> I agree, I did make an error in looking at the calendar on the six months duration of symptoms since onset. I continue to believe that his date of MMI is appropriately designated as of 11/5/98. For this reason, it is reasonable to not allow the 7% whole person impairment due to specific disorders per [AMA Guides] and [claimant] would be awarded an 8% whole person impairment due to [ROM]. I feel this is a slight technicality, as he did continue to have pain due to this work injury at the date that I had seen him, which was six days shy of the six month time period. I feel this is a mild technicality. I don't think his symptoms will change significantly. I feel the 14% whole person impairment was reasonable though, again, per the technicalities of the [AMA Guides], it is more appropriate that he be awarded an 8% whole person impairment.

On April 21, 1999, Dr. M issued an amended TWCC-69 certifying that the claimant reached MMI on November 5, 1998, as he had previously certified, and changing the IR to eight percent.

On October 29, 1998, Dr. MR, a chiropractor, examined the claimant at the request of Dr. W, his treating doctor. In a TWCC-69 dated November 5, 1998, Dr. MR certified that the claimant reached MMI on October 29, 1998, with an IR of 17%, which was comprised of seven percent under Table 49 for a specific disorder of the lumbar spine, seven percent for loss of lumbar ROM, and four percent for loss of cervical ROM. The parties stipulated at the hearing that the claimant's compensable injury included the lumbar spine and the claimant did not claim that he had also injured his cervical spine in the _____, compensable injury. In his narrative report, Dr. MR stated "[t]he specific disorders should be considered even though it is less than six months, due to the MRI findings."

On July 26, 1999, Dr. W referred the claimant to Dr. E, a chiropractor. Dr. E certified that the claimant reached MMI on the date of her examination, July 26, 1999, with an IR of 13%, which is comprised of seven percent for a specific disorder of the lumbar spine and six percent for loss of lumbar ROM.

The claimant initially argues that the self-insured should have obtained a peer review of Dr. M's rating, rather than asking the Commission to seek clarification from Dr. M. We find no merit in this assertion. We have previously recognized that where, as here, a party has a question as to whether the designated doctor properly used the AMA Guides, it is appropriate to seek clarification from the designated doctor. *See* Texas Workers' Compensation Commission Appeal No. 94409, decided May 20, 1994. We perceive no error in the Commission's having forwarded the self-insured's letter requesting clarification to the designated doctor.

The claimant argues that Dr. M's amended rating should not be given presumptive weight. The Appeals Panel has stated that an amended report of a designated doctor can be given presumptive weight if the amendment is made within a reasonable time for a proper purpose. Texas Workers' Compensation Commission Appeal No. 971339, decided August 28, 1997; Texas Workers' Compensation Commission Appeal No. 970954, decided

July 7, 1997; Texas Workers' Compensation Commission Appeal No. 970871, decided June 27, 1997. In his appeal, the claimant acknowledges that the amendment was made within a reasonable time; however, he asserts that it was not made for a "proper purpose." In so arguing, the claimant notes that Dr. M said that the six-month requirement for medically documented pain was a "technicality" of the AMA Guides. Although Dr. M did characterize the requirement that the patient have "a minimum of six months of medically documented pain" as a technicality, he also stated that "it is more appropriate that [claimant] be awarded an 8% whole person impairment." It appears that Dr. M amended his rating because he determined that he could not assign a specific disorder rating to the claimant in compliance with the AMA Guides because the claimant had not had six months of medically documented pain either at the time he reached MMI or at the time of his appointment with Dr. M. Where, as here, an amendment is made based upon the designated doctor's understanding that the change is required under the AMA Guides, we cannot agree that the amendment was not made for a proper purpose, particularly in light of the fact that Section 408.124 mandates use of the AMA Guides to determine an injured worker's IR.

Finally, we consider the claimant's challenge to the hearing officer's determination that the great weight of the other medical evidence is not contrary to the designated doctor's amended IR. Both Dr. MR and Dr. E also assigned a specific disorder rating for the claimant's lumbar spine. However, Dr. E did not examine the claimant until over a year following his compensable injury; thus, the six-month pain requirement was clearly established at the time of her examination. Dr. MR opined that the specific disorder rating "should be considered even though it is less than six months, due to the MRI findings." Dr. MR's opinion represents a difference in medical opinion between him and Dr. M as to whether a specific disorder rating can be assigned in the absence of six months of medically documented pain. By giving presumptive weight to the designated doctor's report in Sections 408.122(c) and 408.125(e), the 1989 Act establishes a mechanism for accepting the designated doctor's opinion in such circumstances. Texas Workers' Compensation Commission Appeal No. 991737, decided September 22, 1999. Our review of the record does not demonstrate that the hearing officer's determinations that the great weight of the other medical evidence is not contrary to that report, and, thus, the claimant's IR is eight percent are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse them on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge