APPEAL NO. 000330

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 January 24, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on June 10, 1998, with an impairment rating (IR) of 14% in accordance with the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The designated doctor had certified a 13% IR; however, the hearing officer determined that he incorrectly converted the claimant's upper extremity impairment to whole person impairment, noting that the five percent upper extremity impairment should have converted to three percent whole person impairment rather than the two percent the designated doctor had certified. The hearing officer then combined that three percent with the 11% the designated doctor had certified for the cervical and lumbar spine and determined the claimant's IR from the designated doctor's raw figures to be 14% rather than 13%. Neither party appealed this correction. In her appeal, the claimant argues that the great weight of the other medical evidence is contrary to the designated doctor's report and asks that we render a decision that she reached MMI on February 4, 1999, with an IR of 17%, as certified by her treating doctor. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Because only the issues of MMI and IR are before us on appeal, our factual recitation will be limited to those facts most germane to those issues. The parties stipulated that the claimant sustained a compensable injury on _____, and that Dr. B was selected by the Commission to serve as the designated doctor. In a Report of Medical Evaluation (TWCC-69) dated June 10, 1998, Dr. B certified that the claimant reached MMI on that date with an IR of 13%, which should have been 14% as noted above. Dr. B's IR was comprised of four percent for a specific disorder of the cervical spine, two percent for loss of cervical range of motion (ROM), five percent for the upper extremity, which should have been three percent whole person, for loss of ROM in the left shoulder, and five percent for a specific disorder of the lumbar spine. Dr. B did not assign any rating for lumbar ROM, noting the claimant's poor effort in ROM testing and emphasizing that she had several positive Waddell's signs on examination.

On February 9, 1999, the claimant's treating doctor, Dr. M, a chiropractor, certified that the claimant reached MMI on February 4, 1999, with an IR of 17%. Dr. M's rating is comprised of four percent for a cervical specific disorder, four percent for loss of cervical ROM, five percent for a specific disorder of the lumbar spine, one percent for loss of lumbar ROM, and four percent whole person for the left shoulder loss of ROM and diagnosis-related impairment.

Dr. M testified at the hearing that he identified three points of concern about Dr. B's rating. Initially, Dr. M stated that Dr. B made a mistake in converting the claimant's upper extremity impairment to whole person. As noted above, the hearing officer agreed that an error in conversion had been made and corrected Dr. B's IR from 13% to 14%. Dr. M also stated that Dr. B should have assigned a rating for bilateral radiculopathy at L4-5 and L5-S1. Finally, Dr. M stated that Dr. B should have assigned a rating for loss of lumbar ROM.

The claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's June 10, 1998, MMI date and his 14% IR, asserting that Dr. M's February 4, 1999, MMI date and his 17% rating should be adopted. The difference in the ratings of Dr.B and Dr. M is attributable to their respective determinations of whether to assign a rating for lumbar neurological deficits and loss of lumbar ROM. Dr. M assigned ratings for both, while Dr. B did not assign a rating for either component. The decision of whether to assign a rating for ROM and neurological deficits, as well as the decision of when the claimant reached MMI, represent differences of medical opinion. By giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e), the legislature has established a procedure where the designated doctor's resolution of such differences is to be accepted. The opinion of Dr. M does not rise to the level of the great weight of the other medical evidence contrary to Dr. B's report. Accordingly, we cannot agree that the hearing officer erred in giving presumptive weight to Dr. B's report and, thus, determining that the claimant reached MMI on June 10, 1998, with an IR of 14%.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Alan C. Ernst
Appeals Judge