

APPEAL NO. 000490

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 February 16, 2000. With respect to the single issue before him, the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 18% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In its appeal, the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR because "the impairment was for pain only with no documentation of any injury to the lower back." The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that the designated doctor selected by the Commission is Dr. R; and that the claimant reached maximum medical improvement (MMI) on October 28, 1998, as certified by Dr. R. At the time of her injury, the claimant was working in a laundry room at a hotel. She tripped over a basket and fell, landing on her right knee. On December 14, 1998, the claimant was first examined by Dr. R, the designated doctor. In a Report of Medical Evaluation (TWCC-69) of the same date, Dr. R certified that the claimant reached MMI on October 28, 1998, with a seven percent IR for loss of range of motion (ROM) in the claimant's right knee. In his accompanying narrative report, Dr. R noted that the claimant stated that she had injured her lower back at the time of the injury and that she had notified her treating doctor of her condition many times, but the condition was never treated. Dr. R further noted that the claimant "is Spanish speaking only and she has limited communication with her doctors." Dr. R stated that his examination of the claimant's lumbar spine revealed "soreness on palpation in the lower lumbar area from L3-L5. The patient has some limitation in [ROM], especially in anterior flexion and posterior extension, but the [ROM] study was invalid." Dr. R diagnosed "lumbar facet syndrome with possible right sciatica" and "right knee injury, post traumatic accident."

On April 1, 1999, the claimant underwent surgery on her right knee. In a July 28, 1999, letter Dr. E, D.O., who performed the claimant's knee surgery, stated:

She still has low back problems and I think these need to be addressed at this point. We will release her from our care with her knee but I would recommend that she have therapy on her back and have this reevaluated due to the fact that this is really causing her knee pain.

In a letter dated May 21, 1999, a Commission benefit review officer asked Dr. R to consider whether her knee surgery would change his assessment of the claimant's MMI date and IR. On September 14, 1999, Dr. R reexamined the claimant and did not change

the October 28, 1998, MMI date; however, he increased the IR to 18%, which was comprised of 14% whole person for the right lower extremity for diagnosis-related and ROM impairment and five percent under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association for an unoperated intervertebral disc or other soft tissue lesion "with medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasms or rigidity associated with none-to-minimal degenerative changes on structural tests." In his addendum report, Dr. R noted that the requirement of six months of medically documented pain had been satisfied as of the time of the second examination, unlike at the time of the initial examination; thus, he assigned a five percent lumbar rating under Table 49.

At the hearing, the carrier's challenge to the designated doctor's decision to assign a five percent lumbar specific disorder rating was two-fold. It argued that the claimant had been certified at MMI before six months had passed and, as such, she could not satisfy the requirement of having six months of medically documented pain and that the lumbar rating was improperly given because a lumbar injury was not part of the compensable injury. However, on appeal, the carrier only contends that the hearing officer erred in giving presumptive weight to Dr. R's 18% IR because the impairment was assigned for pain only "with no documentation of any injury to the lower back." We find no merit in this contention. The hearing officer did not make a specific finding that the claimant's lumbar spine was part of the compensable injury. However, such a finding is implicit in his decision to give presumptive weight to the 18% IR in that it is well-settled that an IR can only be assigned for permanent impairment resulting from a compensable injury. See Sections 401.011(23) and (24). A determination that the claimant sustained a lumbar injury is supported by the evidence from Dr. E and Dr. R so indicating. Nothing in our review of the record demonstrates that the hearing officer's implied finding that the claimant's compensable injury extended to a low back injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). As such, no sound basis exists for reversing the hearing officer's determination giving presumptive weight to the designated doctor's 18% IR in that the designated doctor could properly include a lumbar rating because the lumbar impairment was a result of the compensable injury.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge