APPEAL NO. 000917

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 March 8, 2000. The hearing officer determined that the respondent (claimant) has a 25% impairment rating (IR). In so finding, he held that the great weight of contrary medical evidence was against the report of the designated doctor, who omitted any IR for the agreed psychological injury sustained by the claimant.

The appellant (carrier) has appealed and argues that the designated doctor did not rate the psychological impairment because he was not convinced that it was permanent or that was it confirmable. The carrier argues that there is "no" objective clinical or laboratory evidence addressing the permanency of his condition. The carrier argues that the hearing officer erred by adopting another opinion instead of according presumptive weight to the designated doctor. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant injured his back on _____, while handling a 55-gallon drum of printer's ink. The claimant had back surgery on January 15, 1997; medical records of his treating doctor, Dr. W, document problems of his right leg giving away after the surgery and increasing problems within two months. The claimant was reevaluated with a possible recurrent herniation. By June 1997, the claimant's wife reported to Dr. W that the claimant had significant depression. During this time, the claimant was reducing his use of cigarettes.

The claimant began having treatment for depression and on September 10, 1997, was recorded as having been admitted to a hospital emergency room after an overdose of his pain and anti-depressant medication, along with a large amount of alcohol. The claimant was thereafter seen by Dr. B, who recommended that pending surgical considerations be put on hold until the claimant had the chance to work through his psychiatric issues.

On January 27, 1998, the claimant underwent chronic pain screening and psychological testing administered by Dr. F. Dr. F's report details at least three tests administered in addition to his clinical interview. Dr. F noted that a moderate to severe reactive depression (measurable on the Beck Depression Inventory) had resulted from his inability to work and was serious enough to interfere with rehabilitation. He found that the claimant had ongoing suicidal ideation, high levels of anger and hostility, and was socially isolated. Dr. F also noted that the claimant had substance abuse/dependence disorder and moderate anxiety as indicated by the Beck Anxiety Inventory. Dr. F treated the claimant at least through December 1998, largely through group psychotherapy.

Dr. BR, a psychiatrist, evaluated the claimant on September 14, 1998, in a required medical examination and agreed that the claimant's psychiatric symptoms resulted from the fact that he was chronically dysfunctional due to his back injury. Dr. BR stated that the claimant had partially treated for major depression. He felt it was likely that the claimant would never be a good employee due to ongoing personality difficulties. He estimated that maximum medical improvement (MMI) would be reached in six to nine months.

After being contacted by the carrier regarding the approach of 104 weeks after the date of income benefits accrual, Dr. W performed an impairment evaluation and assigned the claimant an 18% IR. His report showed that the elements of this were 11% 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) for specific conditions; 4% for loss of range of motion (ROM); and 3% for loss of strength and/or sensation. Dr. W certified MMI as of September 11, 1998.

A dispute of this IR led to the appointment of Dr. G as designated doctor. Dr. G was asked to evaluate the claimant for IR only. He examined the claimant on November 11, 1998, and in a brief narrative report noted that the claimant had complaints of numbness of both feet and pain management treatment. Dr. G listed among his records those of Dr. W and Dr. C, a board certified specialist in pain medicine and psychiatry with whom the claimant began treating sometime in 1998. Dr. G certified a 14% IR, consisting of 11% from Table 49 of the AMA Guides and another 3% for ROM loss. No IR was assessed for strength or sensory loss.

Dr. C noted on February 1, 1999, that the claimant had a preexisting head injury which he said accounted for some preexisting problems. He estimated that lack of ability to concentrate or adapt were accounted for 70% by the results of that injury. His back injury, however, had caused a significant pain syndrome and depression which exacerbated any prior problems. The claimant had impairment of only a mild level in the area of social functioning. He had moderate impairment in activities of daily living that were unaffected by his previous injury. Dr. C stated that he had calculated the claimant's psychiatric IR, using "the latest" version of the AMA Guides for Impairment Due to Mental and Behavioral Disorders and came up with eight percent based upon an average of all levels of the functional categories.

Dr. W wrote on May 27, 1999, that Dr. C had come up with an additional "disability" rating for the psychological condition and felt it was appropriate to add this to the overall rating. Dr. W completed a second Report of Medical Evaluation (TWCC-69) which assessed a 25% IR. This TWCC-69 included the definition of objective clinical or laboratory finding and also the directive that an IR be done using the AMA Guides. On July 28, 1999, the Texas Workers' Compensation Commission (Commission) sent the report of Dr. BR, a letter from Dr. W (which one was not stated), and the IR from Dr. C to Dr. G. He was asked to comment whether his opinion would change. In a terse, two-line response two months later, Dr. G said he had reviewed his report and the enclosures and saw no "indication" for changing his opinion.

The carrier agreed that the psychiatric condition was part of the claimant's injury on January 18, 2000, in a benefit review conference agreement. Sometime thereafter, it appears that the carrier propounded six questions to Dr. G for written deposition. None of these questions, however, inquires as to the basis of Dr. G's opinion on impairment or any reasons underlying the apparent omission of an IR for the psychological condition, but are merely "yes or no" questions asking Dr. G if he assigned the 14% IR, performed the rating in accordance with the AMA Guides, and did so as designated doctor. The reason for these questions, which would appear somewhat self-evident from other records, was not explained. No evidence was offered by the carrier to show that the eight percent incorporated by Dr. W had not been done in conformity with the AMA Guides.

The report of a Commission-appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption, a "great weight," is more than a preponderance, which would be only greater than 50%. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992.

However, presumptive weight does not mean a "rubber stamp" adoption of the designated doctor's report where the hearing officer weighs the evidence and determines that the great weight of other medical evidence proves that the claimant is not at MMI or that the percentage of impairment is not accurate. *See* Texas Workers' Compensation Commission Appeal No. 94053, decided February 23, 1994. The hearing officer who makes the "great weight of contrary medical evidence" determination "shall" adopt the rating of one of the other doctors. Section 408.125(e). While the hearing officer may seek clarification from a designated doctor, the Commission is not required to keep revisiting the manner in which the designated doctor has done his report, especially when additional records were already furnished and rejected as a basis for amending that report.

Although the carrier makes several arguments about what the designated doctor's rationale is for not rating the psychological condition, the fact is that the report and responses of the designated doctor are entirely silent about this. He simply declined to change his opinion after receipt of Dr. C's report, for reasons unexplained. We cannot agree that such silence amounts to an assessment that the psychological condition has no permanent aspects as opposed to Dr. G's impression that it was not accepted as part of the compensable injury. The carrier propounded interrogatories that also failed to ask Dr. G to address the pivotal question of whether the psychological condition was considered and why it was not rated. Against this were the reports of Dr. C and Dr. W who considered the condition ratable under the AMA Guides and assigned an eight percent IR to it. Furthermore, there are other records showing that the claimant did undergo psychological testing by Dr. F, that he has been judged to likely never be a satisfactory employee again due to his psychiatric condition, and that he had a severe depression at and after the time MMI was reached, all of which stand as evidence of some permanent effects.

We agree that the record supports the hearing officer's determination that the great weight of contrary medical evidence was against the report of Dr. G and his adoption of Dr. W's report on IR. Dr. W was the certifying doctor and, although he relied on Dr. C's assessment of psychiatric impairment, was ultimately the doctor to ensure that the report was done in conformity with the AMA Guides; he did so by completion of the TWCC-69. We affirm the hearing officer's decision and order that the claimant's IR is 25% in accordance with the report of Dr. W.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge