APPEAL NO. 001109

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 April 4, 2000. Appellant (carrier) and respondent (claimant) stipulated that claimant sustained a compensable injury on _____. The hearing officer determined that carrier did not waive the right to contest the compensability of the claimed right carpal tunnel syndrome (CTS) and that claimant's compensable injury does not extend to or include right CTS. Those determinations have not been appealed and have become final under the provisions of Section 410.169. The hearing officer also determined that on August 12, 1999, Dr. M, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, certified that claimant reached maximum medical improvement (MMI) on May 16, 1999, with a 10% impairment rating (IR); that claimant had surgery on his cervical spine, that is part of the compensable injury, on December 13, 1999; that in a letter dated January 24, 2000, Dr. M amended his report stating that considering claimant's surgery, he had not reached MMI; that Dr. M amended his report for a proper reason and within a reasonable time; that the amended report of Dr. M is entitled to presumptive weight; that the amended report of Dr. M is not against the great weight of the other medical evidence; and that claimant had not reached MMI. Carrier appealed; contended that it was not proper for Dr. M to amend his report; urged that the hearing officer's determinations related to MMI are against the great weight and preponderance of the evidence; and requested that the Appeals Panel reverse the decision of the hearing officer concerning MMI and render a decision that claimant reached MMI on May 16, 1999, with a 10% IR. Claimant responded, stated that the decision of the hearing officer is correct, and requested that it be affirmed.

DECISION

We affirm.

We first address carrier's argument contending that the holding in Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999) prohibits a designated doctor from amending a report and that Appeals Panel decisions permitting a designated doctor to amend a report for a proper reason and within a reasonable time amounted to rule making without authority. The Appeals Panel considered that question in Texas Workers' Compensation Commission Appeal No. 000589, decided May 8, 2000. It set forth the provision of Section 408.122(c) concerning designated doctors and MMI and Section 408.125 concerning designated doctors and IR and wrote:

> In some cases, a designated doctor issued more than one report concerning MMI and IR. Disputes arose as to which of the reports was entitled to presumptive weight. In the absence of statutory or regulatory guidance, the Appeals Panel rendered decisions to resolve the dispute as to which report of the designated doctor was entitled to presumptive weight. Rodriguez, *supra*, concerned exceptions to a Commission rule. The circumstances of

the case before us do not involve exceptions to a Commission rule and are clearly different from those in Rodriguez,

In its appeal, the carrier included numerous definitions included in the 1989 Act. They include the following from Section 401.011:

> (30) "Maximum medical improvement" means the earlier of:
>
> (A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
>
> (B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or
>
> (C) the date determined as provided by Section 408.104.
>
> (23) "Impairment" means any anatomical or functional abnormality or loss existing after [MMI] that results from a compensable injury and is reasonably presumed to be permanent.
>
> (24) "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury.

Carrier has not presented authority for the Commission to ignore those definitions and determine that a date of MMI that is before further material recovery from or lasting improvement to an injury can no longer reasonable be expected or an IR that does not include all of the impairment of the whole body must be used in determining the date a claimant reached MMI and claimant's IR simply because a designated doctor made a certification of MMI and IR and the 1989 Act and Commission rules do not specifically provide for a designated doctor to amend a report. As stated earlier, in the absence of statutory or regulatory guidance, the Appeals Panel considered pertinent parts of the 1989 Act and Commission rules and rendered decisions to resolve disputes as to which report of a designated doctor is entitled to presumptive weight. We do not retreat from those decisions.

Although, in its appeal, carrier urged that the determinations of the hearing officer concerning MMI are against the great weight and preponderance of the evidence, it did not state why those determinations are against the great weight and preponderance of the evidence. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The appealed determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and

are affirmed. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge