APPEAL NO. 001271

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 4, 2000. The hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on October 18, 1996, with a nine percent impairment rating (IR) as certified by Dr. C, the Texas Workers' Compensation Commission-selected designated doctor, in his first amendment to his initial report. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000, remanded the case to the hearing officer to determine whether Dr. C amended his report for a proper reason within a reasonable time; which report of the designated doctor is entitled to presumptive weight; the date the claimant reached MMI; and her IR. A CCH on remand was held on May 9, 2000. The hearing officer determined that the designated doctor properly amended his initial report that the claimant reached MMI on October 18, 1996, with a 15% IR to state that the claimant's IR is nine percent; that Dr. C later amended that amended report for a proper reason, but that he did not do so within a reasonable time; that Dr. C's amended report with the nine percent IR is entitled to presumptive weight; that the great weight of the other medical evidence is contrary to that amended report; and that the claimant reached MMI by operation of law on December 21, 1997, and the claimant's IR is 22%. The appellant (carrier) appealed, urged that the evidence is not sufficient to support some determinations of the hearing officer, contended that the hearing officer erred in using an amended report of the designated doctor that was not done in a reasonable time to determine that the great weight of the other medical evidence is contrary to the earlier amended report of the designated doctor that the claimant reached MMI on October 18, 1996, with a nine percent IR; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant reached MMI on October 18, 1996, with a nine percent IR. The claimant responded, urged that the evidence is sufficient to support the determinations of the hearing officer, contended that the hearing officer did not err in rendering his decision, and requested that it be affirmed.

DECISION

We reverse and render.

At the CCH on remand, neither party offered additional exhibits and the claimant testified. Appeal No. 000138, *supra*, contains a summary of the evidence and citations of Appeals Panel decisions. At the CCH, the carrier argued that the designated doctor's certification that the claimant reached MMI on October 18, 1996, with a nine percent IR is entitled to presumptive weight. The claimant argued that the designated doctor's certification dated June 29, 1999, that she reached MMI on June 17, 1999, or the date of statutory MMI, with a 22% IR is entitled to presumptive weight. Neither party argued that the great weight of the other medical evidence is contrary to a report of the designated doctor. The hearing officer determined that the amended report of the designated doctor

that the claimant reached MMI on October 18, 1996, with a nine percent IR is entitled to presumptive weight. Neither party has appealed that determination.

The hearing officer made Finding of Fact No. 12 that states:

**FINDING OF FACT**

12. The 9% report is against the great weight of the other medical evidence, in that it relies on a mis-diagnosis of Claimant's condition, does not rate all of the injury, and further, because it states that Claimant can improve with further treatment, which is contrary to the definition of [MMI].

There may not always be a clear distinction between what should be considered in determining whether a report of a designated doctor is entitled to presumptive weight and what should be included in a clear statement of the great weight of the other medical evidence that is contrary to the report of the designated doctor. Review of Appeals Panel decisions reveal that some of the reasons stated in Finding of Fact No.12 have been consider in determining whether a report of designated doctor was rendered in compliance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association; whether a report of a designated doctor is entitled to presumptive weight; and whether the report of a designated doctor is contrary to the great weight of the other medical evidence. It appears that the difference results from what was determined by the hearing officer and the appeal and the response of the parties. Fact finders are encouraged to keep the questions separate in resolving disputed issues concerning MMI and IR.

In Texas Workers' Compensation Commission Appeal No. 941323, decided November 16, 1994, the Appeals Panel stated that a factor in analyzing whether the great weight of the other medical evidence is contrary to the designated doctor's report may be the content of the report itself. In Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993, and later decisions, the Appeals Panel commented on the designated doctor provisions in the 1989 Act and some contentions of parties as to why the report of a designated doctor is contrary to the great weight of the other medical evidence and stated that if the contentions were accepted, they would invalidate the entire designated doctor program and preclude the finality the system was designed to foster. The Appeals Panel has written numerous decisions concerning a designated doctor's amending a report in a reasonable time. The hearing officer determined that the June 1999 amendment by the designated doctor was not done in a reasonable time. That determination has not been appealed and has become final under the provisions of Section 410.169. To affirm the determination of the hearing officer that the claimant reached MMI by operation of law on December 21, 1997, and with an IR of 22% as certified in an amendment to a report that was not made in a reasonable time would preclude the finality the system was designed to foster. The hearing officer erred in determining that the first amended report of the designated doctor is contrary to the great

weight of the other medical evidence and using an amendment that was not done in a reasonable time to determine the date the claimant reached MMI and her IR.

We reverse the decision of the hearing officer and render a decision that the claimant reached MMI on October 18, 1996, with a nine percent IR as certified by Dr. C in his first amendment to his October 24, 1996, report; apparently made in June 1997, even though dated in October 1996.

Tommy W. Lueders
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

Judy L. Stephens
Appeals Judge