

## APPEAL NO. 001279

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 May 10, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on January 18, 2000, with an 11% impairment rating (IR) as certified by Dr. M, the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appealed those determinations; urged that the hearing officer erred in awarding the 11% IR because Dr. M did not assign impairment for a specific disorder of the cervical spine 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 (AMA Guides); does not specifically state why she is appealing the determination that she reached MMI on January 18, 2000; and requested that the Appeals Panel reverse the determinations of the hearing officer. The respondent (carrier) replied, stated that the claimant had not offered any argument of the issue of the date she reached MMI, urged that the great weight of the other medical evidence is not contrary to the report of the designated doctor, and requested that the decision of the hearing officer be affirmed.

### DECISION

We affirm.

The Decision and Order of the hearing officer contains a thorough statement of the evidence, including summaries and quotations from medical records and letters from the designated doctor, the claimant's treating doctor, and other doctors. Briefly, the designated doctor assigned five percent for a specific disorder of the lumbar spine, two percent for loss of lumbar range of motion (ROM), two percent for a specific disorder of the thoracic spine, and two percent for loss of cervical ROM. Dr. M explained that she did not include impairment for a specific disorder of the cervical spine because the claimant's symptoms of discomfort involved more of her shoulder and thoracic region and that the claimant had underlying degenerative joint and disc disease, but her injury is not the cause of significant impingement upon her ulnar nerve. A Commission employee wrote two letters to Dr. M, pointing out the opinion of Dr. K that an impairment for a specific disorder of the cervical spine should be included in the claimant's IR. Dr. M responded; provided additional history of the claimant's injury, including pain radiating up the spine; stated that the claimant's pain was clearly of myofascial aspect; and did not change the 11% IR she had assigned.

The decision to include or not to include impairment for a specific disorder under Table 49 of the AMA Guides represents a medical difference of opinion as to whether a claimant's compensable injury resulted in permanent impairment in a claimant's discs or soft tissue. Texas Workers' Compensation Commission Appeal No. 951921, decided December 11, 1995. In Texas Workers' Compensation Commission Appeal No. 962293, decided December 20, 1996, the designated doctor explained why he did not assign impairment for a small herniated nucleus pulposus and the Appeals Panel affirmed the decision of the hearing officer that did not include impairment for a specific disorder of the

lumbar spine. The Appeals Panel has affirmed determinations of hearing officers in which the IRs of the designated doctor that included impairment for loss of cervical ROM but not impairment for a specific disorder of the cervical spine have been used to award a claimant an IR. See Texas Workers' Compensation Commission Appeal No. 000827, decided May 24, 2000.

On appeal, the claimant did not state why the report of the designated doctor concerning the date the claimant reached MMI is not entitled to presumptive weight or why the great weight of the other medical evidence is contrary to that part of the report. The hearing officer did not err in determining that the report of the designated doctor that the claimant reached MMI on January 18, 2000, with an 11% IR is entitled to presumptive weight; that the report is not contrary to the great weight of the other medical evidence; and that the claimant reached MMI on January 18, 2000, with an 11% IR. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge