

## APPEAL NO. 001397

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 May 25, 2000. With regard to the only issue before her, the hearing officer determined that appellant's (claimant) impairment rating (IR) is two percent as assessed by the designated doctor whose report was not contrary to the great weight of the other medical evidence.

The claimant appeals, contending that the designated doctor should have assessed an impairment from Table 49 II B of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) in addition to the loss of range of motion (ROM) assessed by the designated doctor and that the claimant's IR should be at least seven percent as assigned by the treating doctor. The claimant requests that we reverse the hearing officer's decision and render a decision in the claimant's favor. The respondent (carrier) responds, urging affirmance.

### DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (low back) injury (in a slip-and-fall) on \_\_\_\_\_; that the claimant reached maximum medical improvement (MMI) on July 6, 1998; that Dr. R is the Texas Workers' Compensation Commission (Commission)-selected designated doctor; that Dr. S, the claimant's then treating doctor, assessed a nine percent IR; that Dr. R assessed a two percent IR; and that Dr. M, the claimant's current treating doctor, assessed a seven percent IR.

No witnesses testified at the CCH and the case was submitted on the documentary evidence and argument of the parties. Dr. S, the claimant's original treating doctor, on a Report of Medical Evaluation (TWCC-69) dated July 6, 1998, and brief narrative, certified MMI and assessed a nine percent IR. How that rating was calculated is not clear other than Dr. S states "I had previously given him an [IR] of a 9% whole person for a previous work related injury." Dr. S goes on to say that the claimant continues to have "a 9% impairment of the whole person. No additional impairment for the most recent injury." The carrier apparently disputed that rating and Dr. R was appointed as the designated doctor. In a TWCC-69 and narrative both dated August 18, 1998, Dr. R certified MMI and assessed a two percent IR based on "[I]mitation of extension." Attached was a ROM worksheet showing how the two percent was calculated.

At some point, the claimant apparently changed treating doctors and Dr. M, who, in a TWCC-69 dated March 9, 1999, and narrative dated March 20, 1999, assessed an eight percent IR based on five percent impairment from Table 49 II B (unoperated disc with six months medically documented pain and recurrent muscle spasms) of the AMA Guides;

two percent impairment for right lateral flexion; and one percent for left lateral flexion, which were combined for the eight percent IR. By letter dated October 11, 1999, the Commission asked Dr. R why he had not assessed a rating from Table 49. Dr. R replied by letter dated October 15, 1999, stating:

[t]here is regrettably not a category in Table 49 of the *AMA Guides* appropriate to this case. In reviewing the medical documentation and the patient's history, complaints of pain were not noted in excess of six month's duration.

The claimant, at the CCH, urged that the Commission go back to Dr. R again, instructing Dr. R that six months of documented pain does not necessarily have to be met to warrant a rating pursuant to Table 49. The hearing officer, in her Statement of the Evidence, commented:

The Appeals Panel has noted that the report of a designated doctor is entitled to presumptive weight and the Commission "shall base" its determination of MMI and [IR] on that report unless "the great weight of the other medical evidence is to the contrary." No other doctor's report, including that of a treating doctor, is given such special, presumptive status. To overcome the report of the designated doctor requires more than a mere balancing of the evidence. The Claimant maintained that a rating can be assigned pursuant to Table 49 even if the six month requirement had not been met. Claimant alluded to Appeal Panel decisions which would support this position but did not cite any particular decision which so holds. Nonetheless, the designated doctor addressed his failure to assign a rating under Table 49 and the designated doctor has the discretion as to whether or not to assign a rating pursuant to Table 49IIB. This appears to be a mere difference of medical opinion between [Dr. R] and [Dr. M], and as such, the designated doctor is entitled to presumptive weight. Based on the totality of the evidence, the great weight of medical evidence is not contrary to the designated doctor's report and the 2% assigned by [Dr. R] should be adopted.

We agree with the hearing officer's commentary, analysis, and conclusion for the reasons stated by the hearing officer and find the decision supported by the evidence.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Alan C. Ernst  
Appeals Judge