APPEAL NO. 001626

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 June 23, 2000. The hearing officer determined that the appellant's (claimant) maximum medical improvement (MMI) date is July 16, 1999; that the claimant's impairment rating (IR) is seven percent; and that the Commission properly designated Dr. T in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6 (Rule 130.6). The claimant appeals, contending that the hearing officer should not have accorded presumptive weight to the designated doctor's report. Appellant self-insured ("carrier") responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant complains that the hearing officer erred in determining that the designated doctor's report is entitled to presumptive weight. Claimant asserts that the designated doctor, a doctor of osteopath, is not of the same discipline as her treating doctor, a doctor of medicine. Rule 130.6(b)(4) states that, in order to be a designated doctor for a dispute, a doctor shall, to the extent possible, be in the same discipline and licensed by the same board of examiners as the employee's doctor of choice. We perceive no error in the hearing officer's determination that the two doctors, who are licensed by the same licensing authority, are of the same discipline. *See* Texas Workers' Compensation Commission Appeal No. 990781, decided June 1, 1999 (Unpublished).

Claimant contends the hearing officer erred in determining that claimant's IR is seven percent and that her MMI date is July 16, 1999, in accordance with the designated doctor's report. The applicable law and our standard of review are stated or discussed in Sections 408.122(b); 408.125(e); Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992; Section 410.165(a); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant asserts that the designated doctor's report is not entitled to presumptive weight because: (1) he did not assign claimant an additional six percent for six months of documented pain 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; and (2) because he did not include impairment for depression. We note that in July 1999, claimant's treating doctor certified an IR of 19%, and this did not include any impairment for depression. In a January 7, 1999, medical report, claimant's treating doctor, Dr. SV, did note that claimant was crying and "very depressed." However, he did not include a diagnosis of depression in his medical records. Dr. SM noted that claimant was taking an antidepressant and that her medication amount needed to be

increased. Neither Dr. SM or claimant's other doctors diagnosed depression. In a February 18, 1999, report, Dr. SW noted "psychological overlay."

Regarding the depression, there is no medical evidence that claimant was diagnosed with depression. Although claimant may have appeared depressed at some point, there is little or no evidence that the depression is part of claimant's injury. Extent of injury necessarily must be decided by the hearing officer in IR cases so that the injury can be rated. See Texas Workers' Compensation Commission Appeal No. 970784, decided May 3, 1997; Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993. However, in this case, we need not remand for a finding by the hearing officer regarding extent of injury. This is because there is no expert medical evidence that claimant was diagnosed with depression, so the hearing officer need not have decided if her injury included depression. For this reason, we perceive no error in giving presumptive weight to the designated doctor's report, which did not include impairment for depression. Regarding any impairment for six months of documented pain, we note that this was a matter of a difference in medical judgment. The designated doctor was not required to parrot the treating doctor's IR. In any case, claimant does not specify in her brief the grounds of appeal regarding the MMI date found by the designated doctor. Also, the designated doctor's MMI date is the same as that found by the treating doctor. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge