

APPEAL NO. 002861

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 17, 2000, a hearing was held. The hearing officer decided that the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor was entitled to presumptive weight and that the respondent (claimant) reached maximum medical improvement on July 15, 1999, with an impairment rating (IR) of 16%. The appellant (carrier) appealed, asserting that the hearing officer had erred in affording the designated doctor's report presumptive weight. There is no response in the file from the claimant.

DECISION

We affirm.

The claimant sustained a compensable injury which included a cervical injury. The carrier does not dispute that a compensable cervical injury exists, but asserts that range of motion (ROM) deficits for the cervical spine, which comprise 8% of the total impairment assigned by Dr. H, a Commission-selected designated doctor, were improperly included in the IR and render Dr. H's IR invalid. In so arguing, the carrier states that there are no objective criteria to show that the claimant has sustained a cervical injury "that would result in the large [ROM] deficits awarded by the designated doctor." The carrier goes on to argue that an MRI of the claimant's cervical spine has been "interpreted as an essentially negative study, as evidenced by the failure of both the designated doctor and [Dr. S] (Carrier's RME [required medical examination] doctor) to award Claimant any impairment for specific disorders to the cervical spine."

Dr. H considered the claimant's cervical injury as a part of the compensable injury, but failed to award an IR for a specific disorder. In his narrative report, Dr. H stated:

Category one of figure 84 deals with specific disorders of the spine, and refers us to table 49 on page 73. Under this category, percentages can be rated based on specific diagnosis, most commonly arrived at by evaluating structural changes.... It also takes into account that there has been at least six months of documented symptomatology. Since this is not the case, we cannot grant anything for the cervical spine from Table 49. This results in no impairment being granted under category one.

Dr. S's report reveals that he began ROM testing for the claimant's neck, shoulder, elbow and wrist, but discontinued testing because he believed that it was obvious that the tests were going to be unreliable as a result of what Dr. S believed was inconsistent effort. Neither Dr. S nor Dr. H appear to share the carrier's opinion that there is no basis upon which to base ROM deficits.

It is noted that the carrier's argument appears to be based upon an assertion of the carrier's peer review doctor, Dr. C, that "even the Appeals Panel has ruled that significant [ROM] restrictions must have a pathological basis." The carrier has not pointed to any authority for the foregoing statement. Although we have consistently held that an IR may only be awarded for an impairment resulting from a compensable injury, we have also held that "an IR for loss of ROM may be given even in the absence of a rating for a specific disorder of the spine. [Citations omitted.]" Texas Workers' Compensation Commission Appeal No. 951452, decided October 9, 1995. The carrier's argument, that Dr. H's report is fatally flawed because Dr. H awarded impairment for the ROM deficit without awarding any impairment for a specific disorder of the spine, is without merit.

The hearing officer did not err in finding that Dr. H's IR, as amended to correct an earlier mathematical error, was entitled to presumptive weight. We affirm the decision and order of the hearing officer.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge