APPEAL NO. 002912

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 September 7, 2000, with the record closing on November 8, 2000. The hearing officer held that the great weight of contrary medical opinion was against the report of the designated doctor, and adopted the impairment rating (IR) and maximum medical improvement (MMI) date of the appellant's (carrier) doctor. The carrier has appealed.

DECISION

We affirm.

The claimant slipped and fell down to a squatting position on _____, and caught herself with her hand from falling forward. She has experienced pain in her back and neck since then, and was in and out of work. The claimant was diagnosed at one point with cervical and lumbar radicular related pain. A lumbar MRI from January 1998 showed degenerative narrowing at T12-L1 and a small herniation at L4-5 which encroached on the L5 nerve root sleeve. EMG and nerve conduction studies of the lower extremities were normal. A similar test for the cervical area reported right C6 radiculopathy.

The claimant did not have surgery but was treated with injections. A doctor for the carrier, Dr. W, examined the claimant on July 20, 1999. He found no impairment in range of motion (ROM), and found good muscular strength, but assessed IRs for specific spinal conditions for the cervical and lumbar areas. Dr. W certified that the claimant reached MMI on July 13, 1999, with a 12% IR, derived from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. He noted that postinjury testing found spondylolisthesis in the cervical area (7%), and structural change in the lumber area (5%).

A designated doctor, Dr. G, was appointed and certified the same date of MMI as Dr. W but held that the claimant had a 0% IR. He found that the cervical EMG was not clinically corroborated. In addition, the essence of Dr. G's opinion was that structural changes visible on MRI were consistent with degenerative changes in persons of claimant's age (mid-40's) and did not account for her pain. Therefore, he certified that she did not have any impairment related to her injury. Clarification was sought from Dr. G by both the benefit review officer and the hearing officer, and he reiterated his position. While Dr. G was aware that claimant had six months of documented pain, he could not attribute this to any specific condition objectively diagnosed. Dr. G said he did not consider that her spinal changes were "pain generators."

The claimant's treating doctor, Dr. B, certified an even higher IR, 27%, which incorporated ROM for both areas of the spine.

The report of the designated doctor is entitled to presumptive weight (Sections 408.122(c) and 408.125(e)) and must be overcome by a "great weight" of contrary medical evidence, not merely a preponderance. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. However, the designated doctor is not entitled to presumptive weight on causation. *See* Texas Workers' Compensation Commission Appeal No. 950018, decided February 17, 1995. While the designated doctor must base his rating on the "compensable injury," he may not ultimately determine the extent of that injury. Prior to his examination, the medical records in evidence show that the claimant was treated for radiculopathy and had a lumbar herniated disc. There is no evidence that either was questioned as being part of the injury. They were accordingly assessed as part of the injury by the doctor for the carrier.

Although, interpreted one way, Dr. G appears to be saying that any injury sustained by the claimant did not result in impairment (as defined in Section 401.011(23)), he also noted in his letter of clarification to the hearing officer that what he observed in the claimant's MRIs, which he agreed were abnormalities, was not just aging but "wear and tear." He did not agree that her "spine" had been injured as reflected in these tests.

Presumptive weight does not require the trier of fact to "rubber stamp" the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 94053, decided February 23, 1994. Although he has been responsive, Dr. G is evidently of the opinion that the claimant's condition was essentially degenerative. Neither Dr. B nor Dr. W indicated a similar opinion. We cannot agree that the hearing officer erred in finding that the great weight of contrary medical evidence was against Dr. G's report. Having found such, she was required to adopt another report on IR. Section 408.125(e) She reformed this percentage by making a clerical correction to his use of Table 49 to match his narrative.

We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. I believe that the designated doctor in this case determined that the claimant did not have any permanent impairment as a result of her compensable injury. In my opinion, the great weight of the other medical evidence is not contrary to his determination in that regard; thus, I further believe that the hearing officer erred in not giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e). Accordingly, I would have reversed the determination that the claimant's impairment rating (IR) is 13% and rendered a new decision that the claimant's IR is 0% as certified by the designated doctor selected by the Texas Workers' Compensation Commission.

Elaine M. Chaney
Appeals Judge