

## APPEAL NO. 002946

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 December 4, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on April 9, 1999, with an impairment rating (IR) of 12% in accordance with the amended report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission) and that it is not appropriate for the Commission to appoint a second designated doctor. In her appeal, the claimant contends that the hearing officer erred in giving presumptive weight to the designated doctor's amended report, because the designated doctor did not have a valid reason for invalidating the claimant's shoulder range of motion (ROM) and he failed to rate her entire psychological injury. The claimant requests that we appoint a second designated doctor to resolve the issues of MMI and IR. The appeals file does not contain a response to the claimant's appeal from the respondent (self-insured).

### DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, when in the course and scope of her employment, she was the victim of an attempted car jacking; that her injury includes her lumbar and cervical spine, right and left shoulders, and post-traumatic stress disorder (PTSD); and that Dr. W, a chiropractor, is the doctor selected by the Commission to serve as the designated doctor. A carrier-selected doctor certified that the claimant had reached MMI and assigned an IR. That certification was disputed and Dr. W was chosen to serve as the designated doctor.

On April 9, 1999, Dr. W examined the claimant and certified that she had reached MMI as of that date with an IR of 22%, which was comprised of 7% for loss of cervical ROM, 5% for loss of ROM in the left shoulder, 7% for loss of ROM in the right shoulder, and 5% for PTSD. The carrier had Dr. C perform a peer review of Dr. W's IR. Dr. C questioned if there was a pathological basis for the loss of ROM in the claimant's shoulders and also noted that a review of the claimant's medical records revealed that two other evaluators had documented much greater ROM in the claimant's shoulders than had been demonstrated in the testing with the designated doctor. In addition, Dr. C questioned the assignment of the PTSD rating because of preexisting psychological problems for which the claimant had received treatment prior to her compensable injury.

Dr. C's report was forwarded to Dr. W for his review. Based on that report, Dr. W invalidated the claimant's right and left shoulder ROM and amended his IR from 22% to 12%. In his response to the letter forwarding Dr. C's report, Dr. W explained that he invalidated the shoulder ROM based on the records that demonstrated greater ROM in the claimant's right and left shoulders than had been revealed in his testing. With respect to

the PTSD, Dr. W noted that there were underlying psychological problems prior to the injury and opined that the “5% whole person impairment is appropriate in regards to the date of injury.” Three additional letters of clarification were sent to Dr. W expressing concern that he was improperly apportioning the claimant’s rating for her psychological injury and asking that he rate that entire aspect of the compensable injury. In response to all three letters, Dr. W maintained that 5% was the correct rating for the PTSD. Dr. W’s December 8, 1999, letter, which is representative of the three responses, states:

[I]t remains my opinion that [claimant] receive 5% whole person psychological impairment for [PTSD]. According to her psychological background, there were underlying problems prior to the injury and I feel that these were aggravated or exacerbated to a 5% extent. There should be no reason to assign an [IR] based on her complete psychological history, when only a portion is aggravated. In my medical opinion, I feel that 5% whole person impairment is appropriate in regards to the date of injury.

The hearing officer did not err in giving presumptive weight to the designated doctor’s amended report under Sections 408.122(c) and 408.125(e). Initially, the claimant argues that Dr. W did not have a proper basis for invalidating the claimant’s shoulder ROM following his review of Dr. C’s peer review and amending his IR from 22% to 12%. We find no merit in this assertion. We have long recognized that a designated doctor can invalidate ROM based on observation. Texas Workers’ Compensation Commission Appeal No. 970499, decided May 1, 1997; Texas Workers’ Compensation Commission Appeal No. 960311, decided March 27, 1996. The fact that the designated doctor did not do so in his initial examination but only after he received Dr. C’s peer review report does not change the fact that the designated doctor decided, in the exercise of his professional judgment, to invalidate the claimant’s ROM because on two other occasions in ROM testing the claimant had demonstrated significantly better ROM than she showed at her testing with the designated doctor. This provided a proper basis for the designated doctor to invalidate ROM and we cannot agree that the designated doctor’s decision to amend his rating was in violation of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association.

There remains the question of whether the designated doctor improperly apportioned the claimant’s impairment in assigning a rating for PTSD. While we agree with the claimant’s assertions that the entire injury is to be rated and that generally it is inappropriate for the designated doctor to factor out preexisting conditions if the compensable injury aggravates those conditions, our review of the record does not demonstrate that Dr. W did so in this case. Although Dr. W’s responses could have been more clear, a careful review of those responses reveals that Dr. W determined that a 5% rating was the appropriate rating for the claimant’s compensable psychological condition, PTSD. There are no other compensable psychological conditions that have been diagnosed which Dr. W failed to rate. To the contrary, the difference in Dr. W’s rating and the rating of Dr. CC, the claimant’s treating psychiatrist, is due to differences in medical opinion as to the severity of the claimant’s condition and its effect on the claimant’s

performance of the activities of daily living. Dr. CC's opinion does not rise to the level of the great weight of medical evidence contrary to Dr. W's amended report. Accordingly, the hearing officer did not err in giving presumptive weight to that report under Sections 408.122(c) and 408.125(e) and in determining that the claimant reached MMI on April 9, 1999, with an IR of 12% in accordance therewith.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge