APPEAL NO. 011136
FILED JULY 02, 2001

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 April 25, 2001. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on October 3, 2000, with a 7% impairment rating (IR) as assessed by the designated doctor whose report was not contrary to the great weight of other medical evidence.

The claimant appealed, contending that the designated doctor improperly invalidated range of motion (ROM) testing because she had filed a complaint against the doctor and that the 7% was "not valid." Although the claimant's appeal states that she is appealing the date of MMI, the record indicates that the claimant stipulated to the MMI date which has become final. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant fell, injuring her left ankle and back on _____. Dr. B, the claimant's treating doctor, in a report dated October 3, 2000, certified MMI and assessed a 29% whole body IR. This rating was apparently disputed and the parties stipulated that Dr. C was appointed as the "Commission [Texas Workers' Compensation Commission]-selected designated doctor."

In a Report of Medical Evaluation (TWCC-69) and narrative dated November 14, 2000, Dr. C agreed with the October 3, 2000, MMI dated assigned by Dr. B and assessed a 7% IR based on a 7% impairment from Table 49, subsection II(C) of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Lumbar ROM was invalidated due to "suboptimal effort," and nonorganic signs "indicating exaggeration." A 0% impairment was assessed for the ankle and no neurologic deficits were noted. Dr. B questioned the IR because Dr. C had not assessed an impairment for lumbar ROM and failed to give an impairment for the left ankle. A Commission disability determination officer sent Dr. B's comments to Dr. C for review. Dr. C responded by letter dated January 18, 2001, stating that while the claimant's ankle ROM was not normal "the evaluation of the left ankle [was] inconsistent and indicative of gross exaggeration. As a result the ankle ROM was invalidated. The Guides do not allow impairment for just the fact that [claimant] had surgery." A Commission benefit review officer again wrote Dr. C by letter of March 13, 2001, indicating that the claimant wanted to be retested. Dr. C replied:

> The ROM was invalidated because of suboptimal effort, positive Waddell's and other criteria. That indicated symptom magnification. A re-testing of ROM after those inconsistencies have been pointed out to the examinee is

> inappropriate. The [IR] should remain the same as assigned at that evaluation.

Further, the self-insured's doctor, Dr. S, assessed the claimant with a 2% IR for ankle loss of ROM (no impairment was given for the lumbar spine).

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that an IR report by a Commission-appointed designated doctor shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. The Appeals Panel has stated that the great weight of the other medical evidence requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including the treating doctor's report, is accorded the special presumptive status; that the designated doctor's report should not be rejected absent a substantial basis for doing so; and that medical evidence, not lay testimony, is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 960817, decided June 6, 1996; Texas Workers' Compensation Commission Appeal No. 94835, decided August 12, 1994; Texas Workers' Compensation Commission Appeal No. 002878, decided January 31, 2001.

The hearing officer's decision is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge