

APPEAL NO. 011235  
FILED JULY 17, 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 May 15, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on April 7, 1998, with an impairment rating (IR) of zero percent, as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The appeal filed by the claimant's attorney contends that the hearing officer erred in giving presumptive weight to the designated doctor's report. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The claimant filed an additional pro se document that was not timely to serve as an appeal; thus, it was not considered.

DECISION

Affirmed.

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.

The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's report. The designated doctor invalidated range of motion (ROM) based on her determination that the claimant's ROM was "erratic" and "clinically invalid." In addition, the designated doctor noted in a letter, in response to a clarification request from the Commission, that the claimant "demonstrated gross symptom magnification behavior throughout her exam and [IR]. She also demonstrated the actions that she told me she could not do." We have long recognized that a designated doctor can invalidate ROM based upon such observations. Texas Workers' Compensation Commission Appeal No. 970499, decided May 1, 1997; Texas Workers' Compensation Commission Appeal No. 960311, decided March 27, 1996. The claimant contends that the report from the treating doctor and the fact that the claimant had spinal surgery in April 2001, approximately one year after she would have reached statutory MMI on April 22, 2000, constitute the great weight of the other evidence contrary to the designated doctor's opinion that the claimant "demonstrated gross symptom magnification" during her examination with the designated doctor. We cannot agree that the evidence emphasized

by the claimant rises to the level of the great weight of the other medical evidence contrary to the designated doctor's report. As such, we cannot agree that the hearing officer erred in giving presumptive weight to the designated doctor's report in accordance with Section 408.122(c) and 408.125(e) and in determining that the claimant reached MMI on April 7, 1998, with an IR of zero percent.

The hearing officer's decision and order are affirmed.

---

Elaine M. Chaney  
Appeals Judge

CONCUR:

---

Susan M. Kelley  
Appeals Judge

---

Michael B. McShane  
Appeals Judge