APPEAL NO. 011327
FILED JULY 24, 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 (CCH) was held on May 24, 2001. The hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on July 14, 2000 (all dates are 2000 unless otherwise noted), in accordance with the designated doctor's amended report, and that the claimant has an 11% impairment rating (IR) as assessed by a referral doctor.

The appellant (carrier) appeals, contending that the MMI date should be June 14, as originally assessed by the designated doctor, and that the IR should be 9%, as assessed by the designated doctor. The file does not have a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable (low back) injury on _____, that the Texas Workers' Compensation Commission (Commission)-appointed designated doctor was Dr. C, and that the carrier's doctor was Dr. B.

A lumbar MRI was performed on March 30[1] and Dr. JC, the radiologist, had the impression of "mild posterior subligamentous herniations at L4-5 and L5-S1." There was some comment at the CCH, and in the hearing officer's Statement of the Evidence, regarding who actually viewed the MRI film. The best evidence is that all the doctors relied on Dr. JC's impression. At some point, Dr. D, the claimant's treating doctor, referred the claimant to Dr. H, a chiropractor, for work hardening, which lasted from May 17 until July 14.

Dr. B evaluated the claimant on June 21 and in a Report of Medical Evaluation (TWCC-69) and narrative of that date certified MMI with a 0% IR. In the narrative, Dr. B referenced the MRI but commented, without explanation, that the claimant "does not qualify for any neurologic or specific disorders." Dr. H, in a report dated August 7, certified the claimant at MMI on that date with an 11% IR, based on a 7% impairment from Table 49, Section (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) and 2% impairment for lumbar flexion loss of range of motion (ROM) and 2% impairment for lumbar lateral flexion ROM combined to result in the 11% IR.

Dr. C, the designated doctor, in a report dated August 9, certified MMI on June 14 with a 9% IR. The IR was calculated as being 5% impairment from Table 49, Section (II)(B) and 4% impairment for loss of ROM (Dr. C's figures, although slightly different,

[1]Some reports refer to the MRI as an April 3 report but that is the date it was transcribed.

generally track Dr. H's ROM figures). In his narrative, Dr. C clearly references Dr. JC's interpretation of the MRI and in his conclusions again references the March 30 MRI, stating:

> [Claimant] did, however, had [sic] a MRI performed which disclosed minimal, mild posterior subligamentous herniations at L4-5 and L5-S1.
>
> Although these findings are minimal [and] in all probability chronic and incidental, in accordance to the [AMA Guides], the condition of pre-existence is not a determination within the scope of the medical examiner. . . .

Dr. H reviewed Dr. C's evaluation and wrote Dr. D by letter dated September 19 that he disagreed with Dr. C only in regard to the section of Table 49 that should be used, saying that since the claimant has a herniated disc "Table 49 II C" should have been applied. Dr. D, in some undated "To Whom It May Concern" notes, commented that a CT scan of May 1986 showed the claimant had a herniated disc at "L 4/5" but not at "L-5/S-1 which was not present on the May 1986 scan." The Commission wrote Dr. C by letter dated November 10, seeking clarification of whether Table 49, Section (II)(C) or Table 49, Section (II)(B) should be used, and forwarding Dr. D's letter (which presumably included Dr. H's comments). Dr. C replied by letter dated January 16, 2001, stating:

> [Claimant] did however, had a [sic] MRI performed which disclosed minimal, mild posterior subligamentous bulging at L4-5 and L5-S1. These findings are minimal and, at most, correspond to Section B, subsection B of Table 49 of the [AMA Guides].

On an amended TWCC-69, Dr. C changed the MMI certification to July 8 based on a conversation with the claimant that he had finished the work hardening program "three or four weeks" prior to the August 9 examination.

The Commission again wrote Dr. C by letter dated March 13, 2001, enclosing records, which showed that the claimant had not completed work hardening until July 14, and asking if that changed Dr. C's opinion of MMI. Dr. C replied by correspondence dated April 10, 2001, stating that the additional information had changed his mind and amending the MMI date to July 14, on an amended TWCC-69.

The report of a Commission-selected designated doctor is given presumptive weight with regard to MMI status and IR. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption is the "great weight" of other medical evidence. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. If the hearing officer, in rejecting the designated doctor's report, believed that the "great weight of other medical evidence is to the contrary" to that of the designated doctor, the hearing officer must detail the evidence relied upon, and state why it is to the contrary and in what regard the other medical evidence so greatly outweighs the designated doctor's report. Texas Workers' Compensation Commission Appeal No.

951125, decided August 28, 1995; Texas Workers' Compensation Commission Appeal No. 941482, decided December 13, 1994; Texas Workers' Compensation Commission Appeal No. 960570, decided April 22, 1996. We have further held that a designated doctor's report should not be rejected absent a "substantial basis" for doing so. Texas Workers' Compensation Commission Appeal No. 94075, decided February 28, 1994. The hearing officer, in this case, rejected the designated doctor's report on the IR stating:

> [T]he designated doctor formed an opinion contrary to the existing medical data without any medical basis for his opinion since he did not review the MRI. Based on the opinion of [Dr. JC], a radiologist, who found herniations at L4-L5 and L5-S1, [Dr. C's] use of Category B instead of Category C is against the great weight of medical evidence. Category C states a 7% [IR] shall [be] assessed for "Unoperated, with medically documented injury and a minimum of six months of medially [sic, medically] documented pain, recurrent muscle spasm or rigidity associated with moderate to severe degenerative changes on structural tests, including Unoperated herniated nucleus pulposus, with or without radiculopathy" which is consistent with the radiologist's findings. [Dr. C] had no reasonable basis to form an opinion contrary to what the films showed because he never viewed the films. His characterization of the herniations as "bulging" is incorrect according to the MRI report.

The hearing officer appears to reject Dr. C's report as being against the great weight of other medical evidence based on the fact that Dr. C "never viewed the films." However, there is no evidence that any of the other doctors had reviewed the actual film and everyone seems to rely on Dr. JC's impression with differing interpretations regarding which classification of Table 49 should be used. Instead of detailing the evidence how the great weight of other medical evidence is contrary to the designated doctor's report, the hearing officer merely substitutes her opinion that Dr. H's interpretation is correct. That does not constitute the great weight of other medical evidence. The hearing officer's decision that the claimant's IR is 11% as found by Dr. H as being the great weight of other medical evidence contrary to the designated doctor's report is not supported by the evidence. We reverse that decision and render a new decision that the claimant's IR is 9% as assessed by the designated doctor whose opinion was not contrary to the great weight of other medical evidence.

Regarding the MMI date, the carrier contends that an amendment of the designated doctor's MMI date can only be done for a "proper reason" and that the hearing officer failed to do a "proper reason" analysis. While the hearing officer did not specifically use the term "proper reason" clearly, the hearing officer considered that the Commission forwarded the accurate dates of work hardening to the designated doctor and the designated doctor amended his report to reflect the accurate ending date of work hardening rather than rely on the claimant's verbal estimation. The hearing officer did not err in accepting the designated doctor's amended July 14 MMI date.

The hearing officer's decision and order on the MMI date of July 14 is affirmed, and we reverse and render a new decision that the claimant has a 9% IR.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge