APPEAL NO. 011687
FILED SEPTEMBER 5, 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 July 9, 2001. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 5, 1997, with an impairment rating (IR) of eight percent, as certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor. The claimant appeals these determinations, asserting that the IR fails to account for residual symptoms of the claimant's injury and loss of range of motion (ROM). Additionally, the claimant asserts that the designated doctor should have been disqualified because he acted as a required medical examination doctor for another insurance carrier in a subsequent, related case. The claimant further asserts that the hearing officer erred in refusing to grant a continuance of the CCH. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Disqualification of Designated Doctor

We first address the claimant's assertion that the Commission-appointed designated doctor, Dr. G, should be disqualified from serving as the designated doctor in this proceeding. At the hearing below, the claimant moved that a new designated doctor be appointed in this proceeding because Dr. G acted as required medical examination doctor for another insurance carrier in a subsequent, related case. The claimant refers to Texas Workers' Compensation Appeal No. 990884, decided June 10, 1999, in which the claimant was determined not to have sustained a new compensable injury, but to have suffered a continuation of the compensable injury which is the subject of the instant proceeding. The motion for the appointment of a new designated doctor was denied.

Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b) (Rule 130.6(b)), a designated doctor shall "not have any disqualifying association as specified in Rule 126.10(a)." A disqualifying association is any association which may reasonably be perceived as having potential to influence the conduct or decision of the designated doctor. Rule 126.10(a)(4). The claimant offered no evidence of a disqualifying association contemplated by Rule 126.10(a), nor did he allege that Dr. G did anything other than receive normal payments for medical services rendered. We note that Dr. G's participation in Appeal No. 990884, *supra*, occurred nearly two years following the issuance of his designated doctor's report in this proceeding and involved a different insurance carrier. At the time that Dr. G issued his designated doctor report he had no disqualifying association. Under the circumstances, we cannot conclude that Dr. G is disqualified from serving as the designated doctor in this proceeding.

Motion for Continuance

The claimant asserts that the hearing officer erred in refusing to grant his motion for continuance of the CCH. The claimant sought additional time to request a reevaluation by the designated doctor for purposes of MMI/IR.

Section 410.155(b) of the 1989 Act and Rule 142.10(b)(2) provide that the Commission may grant a continuance if the hearing officer determines that good cause exists for the continuance. We review good cause determinations under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 002251, decided November 8, 2000. The hearing officer's determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. *See* Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for the existence of good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. Under the circumstances of this case, we cannot conclude that the hearing officer abused his discretion in determining that good cause did not exist to continue the CCH.

MMI/IR Certification

The hearing officer did not err in determining that the claimant reached MMI on March 5, 1997, with an eight percent IR as certified by the Commission-appointed designated doctor. Sections 408.122(c) and 408.125(e) of the 1989 Act provide that the report of a Commission-appointed designated doctor determining the date of MMI and the claimant's IR 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. We have held that a "great weight" determination 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; and that the designated doctor's report should not be rejected absent a substantial basis for doing so. Texas Workers' Compensation Commission Appeal No. 960897, decided June 28, 1996.

The claimant testified that his treating doctor certified him at MMI on March 5, 1997, with an eight percent IR. The claimant disputed the rating and was subsequently examined by a Commission-appointed designated doctor. The designated doctor also certified that the claimant reached MMI on March 5, 1997, with an eight percent IR for a surgically treated disc lesion with no residuals and zero percent IR for loss of ROM. The claimant was subsequently examined by Dr. M and certified with a 15% IR–10% for a surgically treated disc lesion with residuals and 5% for loss of ROM. Dr. M did not certify a date of MMI. The claimant asserts, essentially, that the designated doctor's MMI/IR certification is contrary to the great weight of the other medical evidence because it fails to account for residual symptoms of the claimant's injury and any loss of ROM, as certified by Dr. M. The claimant urges the adoption of Dr. M's report. We view Dr. M's report as representing a

difference in medical opinion which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. Accordingly, the hearing officer's MMI/IR determination 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 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier IS **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge