APPEAL NO. 011714
FILED SEPTEMBER 11, 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 June 8, 2001. The hearing officer determined that the respondent (claimant) had disability from his hernia injury from October 23 through December 22, 2000, and that his impairment rating (IR) was 10%, in accordance with the opinion of the designated doctor, which was not against the great weight of the contrary medical evidence.

The appellant (carrier) appeals and argues that the treating surgeon for the hernia released the claimant to work effective September 5, 2000, and that chiropractic treatment after that date was not medically necessary and cannot form the basis for a finding of disability. The carrier argues that the adoption of the designated doctor's report is error because the claimant had a Class I rather than a Class 2 hernia. There is no response from the claimant.

DECISION

The decision is affirmed.

DISABILITY

The hearing officer did not err in her finding of the duration of disability. The claimant worked as a pipefitter at the time of his lifting injury. Although the treating doctor, Dr. P, was a chiropractor, the doctor who performed the surgical repair for the claimant's hernia on July 27, 2000, was a medical doctor. This doctor signed a work-release statement effective September 5, 2000; but on October 5, 2000, he wrote a letter in which he stated that the claimant was, at that time, satisfactorily healed enough to go into work hardening until he reached maximum medical improvement (MMI). A functional capacity evaluation performed on October 4, 2000, found that the claimant had the capacity to work light duty only. He underwent work hardening and was kept off work by Dr. P until he reached MMI on December 22, 2000. A light duty or conditional release is evidence that disability continues. Texas Workers' Compensation Commission Appeal No. 991901, decided October 8, 1999.

IR

The hearing officer did not err in giving presumptive weight to the IR report of the designated doctor. Both the designated doctor and a referral doctor found that the claimant had a 10% IR. A doctor for the carrier assessed a 0% IR. The carrier argues, however, that the claimant gets only a 5% IR under its interpretation of Chapter 10, Section 10.9, Table 6 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. It argues that the claimant had a Class I, not a Class 2, hernia. It further argues that the

designated doctor assessed "the maximum of 10%" for a Class 2 hernia. The carrier states that the difference between the two classes is whether there is a "palpable defect," and then argues significance in the fact that a doctor who was not the designated doctor changed his mind about the existence of a palpable defect after a disagreement with the adjuster.

First of all, the carrier's argument about the determining distinction between the two classes of hernias is not well-taken. Not only is 10% the minimum, rather than the maximum, of the range of IRs for Class 2 hernias, but both classifications include in their criteria (and in the examples given) the existence of a "palpable defect." In addition, there are alternative grounds for assessing the classification that are not dependent upon palpable defect. Second, and more to the point, the report of the designated doctor documents a palpable defect and a pain complaint of 5 on a 10 scale, as well as a lifting limit. The carrier's arguments in this regard merely track its own doctor's basis for assessing a 0% IR. Mere difference of medical opinion by another doctor does not constitute a "great weight" of medical opinion against the designated doctor's report.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this is the case here and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge