APPEAL NO. 012116
FILED OCTOBER 23, 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 July 16, 2001, with the record closing on August 7, 2001. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on June 1, 1999, with a 44% impairment rating (IR) as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission), and that the claimant did not waive the right to contest the report of the designated doctor. The respondent/cross-appellant (carrier) appealed the hearing officer's determinations that the claimant's IR is 44% and that the claimant did not waive the right to contest the report of the designated doctor, but does not appeal the hearing officer's decision on the MMI date. The claimant appealed the hearing officer's decision on the date of MMI, but also stated that the hearing officer correctly decided that his IR is 44% and that he did not waive the right to contest the report of the designated doctor.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant reached MMI on June 1, 1999, with a 44% IR and that the claimant did not waive the right to contest the report of the designated doctor.

The MMI and IR report of the designated doctor chosen by the Commission has presumptive weight, and the Commission shall base its determination of MMI and IR on that report unless the great weight of the other medical evidence is to the contrary. Sections 408.122(c) and 408.125(e). MMI is defined in Section 401.011(30) and IR is defined in Section 401.011(24). The Appeals Panel has held that a designated doctor may amend a report for a proper reason within a reasonable time, and that a proper reason and reasonable time depend on the circumstances of individual cases. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000.

It is undisputed that the claimant sustained a compensable back, neck, and head injury on November 6, 1998. Dr. P, the initial treating doctor, diagnosed the claimant as having a neck sprain, a lumbar sprain, and headaches. A brain CT scan done on November 17, 1998, was normal. At Dr. P's request, Dr. M performed an electroencephalogram on the claimant for a diagnosed closed head injury on _____, and that test was normal. On April 16, 1999, Dr. M again evaluated the claimant for his closed head injury and prescribed medication and follow-up evaluations, which were done in May and June 1999.

Dr. PA examined the claimant at the carrier's request on May 17, 1999, and certified that the claimant reached MMI on May 17, 1999, with a 5% IR. Dr. PA assigned impairment only for the lumbar spine.

The claimant disputed Dr. PA's certification, and the Commission chose Dr. MA as the designated doctor to determine MMI and IR. Dr. MA examined the claimant and reviewed the medical records and certified that the claimant reached MMI on June 1, 1999, with a 14% IR. The 14% IR was for impairment of the cervical spine and lumbar spine.

The claimant changed treating doctors to Dr. B, who referred the claimant to Dr. PD in July 1999, who diagnosed the claimant as having, among other things, a traumatic brain concussion. Dr. B also referred the claimant to Dr. BL, who diagnosed the claimant as having a closed head injury.

In April 2000, the claimant changed treating doctors to Dr. R, who diagnosed the claimant as having a traumatic brain injury, referred the claimant to a brain injury program, and opined that the claimant would not be at MMI until statutory MMI, and that the brain injury was not evaluated in the claimant's prior IR.

In a letter to the Commission dated May 22, 2000, the claimant disputed the MMI and IR certification of Dr. MA, the designated doctor, because his brain injury was not included in the evaluation and he had been referred to a brain injury program by Dr. R. The letter was received by the Commission on June 9, 2000.

In a report dated June 19, 2000, Dr. R wrote that she had faxed information regarding the claimant's brain injury to the Commission. On June 27, 2000, the Commission requested that Dr. MA, the designated doctor, review the "records" and asked if an IR was given for the closed head injury. On June 28, 2000, Dr. MA responded that he did not look for a head injury because that was not the claimant's complaint, that the claimant was alert and oriented, and that there was no neurologic defect.

Commission Dispute Resolution Information System notations dated February 12, 2001, reflect that the claimant wanted Dr. MA, the designated doctor, to review all of his medical records; that the benefit review officer (BRO) would send the medical records to Dr. MA and ask Dr. MA to review those records; and that the BRO would ask Dr. MA if he would reevaluate the claimant or refer the claimant for an evaluation of his closed head injury.

On February 21, 2001, Dr. MA, the designated doctor, referred the claimant to Dr. MR, a neurologist, for an evaluation and IR for the closed head injury. Dr. MR examined the claimant in March 2001 and reported that the claimant has a 35% IR for cognitive deficits related to his closed head injury. Dr. MR did not opine on MMI but did suggest that the claimant continue with the brain injury program Dr. R had referred him to.

On March 27, 2001, Dr. MA, the designated doctor, certified that the claimant reached MMI on June 1, 1999, with a 49% IR. Dr. MA added the 14% IR for the back and neck to the 35% IR for the head injury.

On April 16, 2001, the BRO wrote Dr. MA, the designated doctor, and asked him if there was anything in the medical records sent to him on February 14, 2001, to indicate that the date of MMI had changed from June 1, 1999, and, if so, what those indications are, and what would be the date of MMI. The BRO also advised Dr. MA that the statutory date of MMI was November 10, 2000. In response, Dr. MA wrote on April 20, 2001, that the claimant's condition had not changed since June 1999.

At the carrier's request, Dr. O reviewed Dr. MA's amended report, which assigned a 49% IR, and Dr. O pointed out that Dr. MA had improperly added the 14% to the 35% instead of combining those ratings under the Combined Values Chart (CVC) in the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989 (AMA Guides), which would result in a 44% IR; that he would have assigned the claimant a 20% IR for cognitive deficits; and that he would not have assigned any impairment for the spine.

The reports of Dr. MA, the designated doctor, and the report of Dr. MR, the doctor to whom Dr. MA referred the claimant for evaluation of the closed head injury, reflect that they used the appropriate version of the AMA Guides.

The hearing officer found that Dr. MA, the designated doctor, initially certified that the claimant reached MMI on June 1, 1999, with a 14% IR, without rating the claimant's closed head injury, which was part of the compensable injury; that Dr. MA issued an amended report and certified that the claimant reached MMI on June 1, 1999, with a 49% IR; that Dr. MA incorrectly added the 35% IR for the closed head injury to the 14% IR instead of using the CVC of the AMA Guides; that the 35% IR combined with the 14% IR gives the claimant a 44% IR; that the claimant disputed Dr. MA's report in a May 22, 2000, letter to the Commission, which was received on June 9, 2000, and this was within a reasonable amount of time; that the amended report of Dr. MA was made in a reasonable amount of time and for a proper purpose and is entitled to presumptive weight; and that the great weight of the other medical evidence is not contrary to the amended findings of the designated doctor, after combining the 35% and the 14%. The hearing officer concluded that the claimant reached MMI on June 1, 1999, with a 44% IR, and that the claimant did not waive the right to contest the report of the designated doctor.

The claimant contends that the great weight of the medical evidence shows that he did not reach MMI until November 6, 2000, which he calculates as the date of statutory MMI. The carrier contends that the correct IR is 14% as initially determined by the designated doctor, and that the claimant did not timely dispute the designated doctor's initial report.

There is much conflicting evidence in this case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. It has been held that the finder of fact may correct a clerical error made by a doctor in using the CVC of the AMA Guides. Old Republic Insurance Company v. Rodriguez, 966 S.W.2d 208 (Tex. App.-El Paso 1998, no pet.). The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge