APPEAL NO. 012201
FILED NOVEMBER 6, 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 August 16, 2001. The hearing officer resolved the disputed issue before her by determining that the July 30, 1999, report of Dr. T, the designated doctor appointed by the Texas Workers' Compensation Commission's (Commission), is entitled to presumptive weight and that the appellant's (claimant) impairment rating (IR) is 14%, as certified therein. The claimant has appealed these determinations asserting sufficiency of the evidence grounds. The file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable low back injury on _____, and that he reached statutory maximum medical improvement (MMI) on March 1, 1998. The record indicates that the claimant has been examined by Dr. T at least three times, and that in response to inquiries from the Commission, Dr. T has issued four separate IRs. Dr. T initially examined the claimant on August 19, 1996, and certified that he had reached MMI as of July 16, 1996, with a 0% IR (Dr. T's first IR certification). On the recommendation of his treating doctor, Dr. W, the claimant underwent spinal surgery on March 2, 1998. On May 8, 1998, the Commission sent Dr. T additional records and a request for clarification of the claimant's IR. Dr. T responded, indicating that his opinion had changed and that he reexamined the claimant on August 7, 1998. As a result of the reexamination, the Dr. T issued a second IR of 10% for specific disorders per Table 49, II-E, "surgical treated disc lesion, with residual symptoms," of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). On or about the time of Dr. T's second IR certification, Dr. W determined that the claimant's first surgery was unsuccessful and needed to be explored and/or revised. The claimant underwent a second spinal surgery on March 17, 1999. Dr. W certified that the claimant reached MMI on May 6, 1999, with a 21% IR. After the claimant's second surgery, Dr. T was again contacted by the Commission for clarification. In response, Dr. T again reexamined the claimant and issued a third IR of 14% for specific disorders per Table IV-D-I of the AMA Guides on July 30, 1999. It should be noted that in his report, Dr. T states that the claimant complained of urinary incontinence and sexual dysfunction but there was no documentation, other than subjective complaints, indicating that those two conditions exist. There is nothing in the record to indicate that any additional surgery was under consideration at this time, and the claimant testified that he doesn't believe that it was. The claimant had a third surgery on January 19, 2001, and the Commission once again contacted Dr. T for clarification. Dr. T did not reexamine the claimant, and on March 19, 2001, issued a fourth IR of 16% consisting of 12% for the first surgery, 2% for the second surgery, 1% for the third surgery,

and 1% for radiculopathy.

On appeal, the claimant asserts that the carrier's exhibits should not have been allowed into evidence as they were not timely exchanged and that additional medical records from his doctors should have been admitted into evidence to support his position. At the CCH, the claimant neither objected to the carrier's exhibits nor attempted to tender any exhibits which are not currently in the record. Thus, the claimant has waived his right to raise these issues on appeal. The same principle applies to the claimant's assertions that Dr. T may have been biased against him, that the CCH was not held within 60 days of the benefit review conference (BRC), and that the carrier failed to attend a BRC, thereby prejudicing him. None of these issues were raised or developed at the CCH. It is well-settled that the Appeals Panel is limited to issues developed below and that we will not consider an argument raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 011288, decided July 19, 2001.

The hearing officer did not err in determining that the Dr. T's July 30, 1999, report is entitled to presumptive weight and that the claimant's IR is 14% as certified therein.

Section 408.125(e) provides that if a designated doctor is appointed by the Commission to resolve a dispute as to IR, the report of that doctor shall have presumptive weight, and the Commission shall base its IR on that report unless the great weight of the other medical evidence is to the contrary. It is well-settled that the report of a designated doctor may be amended for a proper purpose and in a reasonable amount of time. However the resolution of an IR cannot be indefinitely deferred to await the results of a potential lifetime course of medical treatment. Texas Workers' Compensation Commission Appeal No. 950615, decided June 5, 1995. In determining whether a designated doctor's amendment of a prior report is effective, particularly in the context of what constitutes a reasonable time to amend the report, it is important to analyze the date of statutory MMI and the date when surgery came under active consideration. Texas Workers' Compensation Commission Appeal No. 990058, decided February 24, 1999. In the case before us, the stipulated statutory MMI was March 1, 1998. There is no evidence to indicate that a third surgery was under active consideration on July 30, 1999, when Dr. T issued his third IR of 14%. In fact, the third surgery was not performed until January 19, 2001, a year and a half after the designated doctor's second-amended report and almost three years after statutory MMI. Whether a doctor has amended his or her report for a proper reason and within a reasonable period of time are essentially questions of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 960888, decided June 18, 1996. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We find no reversible error in the hearing officer's determination that the third amended report of March 19, 2001, was not rendered within a reasonable period of time since it was prompted by the claimant's third surgery, which was not under active consideration at the time of the second amended report.

Additionally, we find that the hearing officer did not err in giving Dr. T's second amended report presumptive weight pursuant to Section 408.125(e). Whether the great weight of the other medical evidence was contrary to the opinion of Dr. T is also a factual determination for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. While the claimant attacked that report for failing to give a rating for radiculopathy, on April 21, 2000, his own treating doctor sent a letter to the Commission indicating that the claimant did not have any ratable neurological deficits as a result of his compensable injury. Nothing in our review of the record indicates that Dr. T's second amended report is against the great weight of the other medical evidence. We are satisfied that the challenged determination of the hearing officer is sufficiently supported by the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986), In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT** and the name and address of its registered agent for service of process is

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Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge