

APPEAL NO. 013189
FILED FEBRUARY 21, 2002

Following a contested case hearing held on December 7, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the sole disputed issue by finding that the designated doctor's amended report of September 18, 2001, is afforded presumptive weight and is not overcome by the great weight of the other medical evidence and by concluding that, based on the designated doctor's report, the respondent's (claimant) impairment rating (IR) is 25%. The appellant (carrier) urges in its request for review that "the great weight of the evidence seems to be that the 19% [IR] should be the correct one" because "by July 19, 2000, all physicians were in agreement with a 19% [IR]." The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that she injured her knee and back when she tripped and fell at work on _____, and that she subsequently underwent two operations on her lower back in the coccyx area and three operations on her right knee. She indicated that the last two operations took place on June 14, 2000, and October 27, 2000, after the carrier's doctor had assigned a 12% IR on November 3, 1999, and the designated doctor had assigned a 12% IR on January 6, 2000. Her treating doctor assigned a 19% IR on July 16, 2000, and the designated doctor subsequently agreed with the treating doctor's 19%. The evidence reflects that the designated doctor reexamined the claimant on September 18, 2001, and amended his IR to 25%. The carrier takes the position that the great weight of the medical evidence supports an IR of 19% because the carrier's doctor assigned 18%, the treating doctor assigned 19%, and the designated doctor agreed with the treating doctor's 19% rating before reexamining the claimant and issuing a new report in response to a request for clarification.

Section 408.125(c) provides in part that the report of the designated doctor shall have presumptive weight and the Texas Workers' Compensation Commission (Commission) shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), effective January 2, 2002, provides in part that the designated doctor shall respond to any Commission request for clarification and that "[t]he doctor's response is considered to have presumptive weight as it is part of the doctor's opinion." The Appeals Panel has given immediate application to this new rule. See Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. *And see* Texas Workers' Compensation Commission Appeal No. 012977, decided January 22, 2002; Texas Workers' Compensation Commission Appeal No. 012941, decided January 22, 2002; and Texas Workers' Compensation Commission Appeal No. 013025, decided January 28, 2002. We are satisfied that, based on the evidence of record, the

determination of the hearing officer giving presumptive weight to the designated doctor's amended report 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, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE OF WAUSAU** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
1350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge