APPEAL NO. 020284
FILED MARCH 11, 2002

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 January 9, 2002. The hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on April 14, 2001 (the date the parties stipulated was the statutory MMI date), with a 16% impairment rating (IR) as assessed by the designated doctor in an amended report and that the claimant had disability from August 24, 2000, through April 14, 2001.

The appellant (carrier) appealed, contending that the designated doctor's initial IR should be afforded presumptive weight and that the claimant did not have any disability. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (low back) injury on _____, and that Dr. K (in essence the treating doctor) in a report dated July 30, 1999, certified MMI on July 29, 1999. The claimant timely disputed that rating and Dr. L was appointed as the designated doctor. In her first report dated September 28, 1999, Dr. L certified MMI on that date with a 9% IR. The claimant continued to have back complaints and the parties stipulated that the claimant had spinal surgery (two-level fusion at L4-5 and L5-S1) on August 28, 2000, by Dr. K. (Dr. K rescinded his earlier assessment.) The designated doctor was asked to reevaluate the claimant by the Texas Workers' Compensation Commission (Commission) and, in a report dated February 23, 2001, Dr. L certified that the claimant was not at MMI. The parties stipulated that the claimant reached statutory MMI (*see* Section 401.011(30)(B)) on April 14, 2001. Subsequently, in a report dated July 3, 2001, Dr. L certified MMI on that date with a 16% IR. The hearing officer found MMI to be April 14, 2001, the date of statutory MMI, with a 16% IR as assessed by the designated doctor in her amended report and that the great weight of other medical evidence was not contrary to the designated doctor's report of July 3, 2001, giving the claimant a 16% IR with a statutory MMI date of April 14, 2001.

The carrier appeals, citing a number of Appeals Panel decisions, and contends that the designated doctor's first report should be adopted. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) amended effective January 2, 2002, provides in pertinent part:

> The designated doctor shall respond to any commission requests for clarification not later than the fifth working day after the date on which the doctor receives the commission's request. **The doctor's response is**

> **considered to have presumptive weight as it is part of the doctor's opinion.** [Emphasis added.]

Further, in Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, the Appeals Panel commented:

> The rule [Rule 130.6(i)] does not provide any time limits, nor does it have any qualifications on it, such as "for a proper purpose." When this rule was under consideration for adoption [Texas Workers' Compensation Commission Appeal No. 980355, decided April 6, 1998], was raised by a commenter as an example of why a response to a clarification should not always be given presumptive weight. The Commission disagreed, and responded: **"The intent is to ensure that the doctor's clarification has presumptive weight,**" and **"If the designated doctor determines that the additional documentation is supportive of a change in his original recommendation, then the opinion should also carry presumptive weight."** [Emphasis in the original.] The Commission has left no doubt about its position on this issue.

The designated doctor's two amendments are consistent and the hearing officer did not err in granting presumptive weight to Dr. L's July 3, 2001, amended report and applying the statutory MMI date. In affirming the hearing officer's determination on the MMI date, we also affirm the hearing officer's determinations on disability from August 24, 2000 (just prior to her August 28, 2000, surgery) through April 14, 2001, as being supported by the evidence and not incorrect as a matter of law. We conclude that the hearing officer's determinations are 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 hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **RELIANCE NATIONAL INSURANCE COMPANY, an impaired carrier** and the name and address of its registered agent for service of process is

CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge