

APPEAL NO. 020492
FILED APRIL 17, 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 February 13, 2002. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) had an impairment rating (IR) of 11% in accordance with the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appealed, arguing that the hearing officer erred in giving presumptive weight to the designated doctor's IR because the great weight of the other medical evidence is contrary thereto. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that an IR report by a Commission-selected designated doctor shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's report. The designated doctor invalidated range of motion (ROM) based on his determinations that the claimant's ROM was indicative of symptom magnification and that the ROM studies "are all invalid." In addition, the designated doctor noted in a letter, in response to a clarification request from the Commission, that the claimant's test "is consistent with symptom magnification." He further stated, "It is still my professional opinion that this is a good impairment report considering the state that [claimant] was in at the time of the examination." We have long recognized that a designated doctor can invalidate ROM based upon such observations. Texas Workers' Compensation Commission Appeal No. 970499, decided May 1, 1997; Texas Workers' Compensation Commission Appeal No. 960311, decided March 27, 1996. The claimant contends that the reports from the treating doctor and the carrier-selected required medical examination doctor constitute the great weight of the other evidence contrary to the designated doctor's opinion that the claimant's ROM testing was invalid. We cannot agree that the evidence emphasized by the claimant rises to the level of the great weight of the other medical evidence contrary to the designated doctor's report. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Sections 408.122(c) and 408.125(e) and in determining that the claimant has an IR of 11%.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge