APPEAL NO. 020652
FILED MAY 7, 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 21, 2002. With respect to the issues before her, the hearing officer determined that the respondent (claimant) reached statutory maximum medical improvement (MMI) on January 3, 2001, with a 16% impairment rating (IR), as certified by Dr. D, the designated doctor selected by the Texas Workers' Compensation Commission (Commission), and that the claimant had disability as a result of his _____, compensable injury from October 16, 1999, to January 3, 2001. In its appeal, the appellant (carrier) asserts error in those determinations. In his response, the claimant urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. On February 23, 2000, Dr. D certified that the claimant reached MMI on October 15, 1999, with a 12% IR, and then on December 5, 2001, he amended his report and certified that the claimant reached statutory MMI on January 3, 2001, with 16% IR. The claimant's treating doctor, Dr. G, testified that the claimant had his first spinal surgery in May 1999, and his second spinal surgery on March 21, 2001. The Commission sent several letters to Dr. D to request clarification of his initial certification of MMI and IR based on Dr. G's medical records. Dr. D responded to each of the letters and maintained that the claimant's date of MMI was October 15, 1999, and that his IR was 12%; however, on December 5, 2001, Dr. D amended his report after reexamining the claimant following his second spinal surgery. Dr. D certified that the claimant reached MMI on January 3, 2001, the date of statutory MMI, with a 16% IR. The increase in the claimant's IR from 12% to 16% is due to the fact that Dr. D obtained valid range of motion results when he reexamined the claimant.

The hearing officer did not err in determining that the claimant reached statutory MMI on January 3, 2001, with a 16% IR. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that 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. **<u>The doctor's response is considered to have presumptive weight as it is part of the doctor's opinion</u>.** [Emphasis added.]

The carrier essentially argues that Rule 130.6(i) does not apply to this case; that Rule 130.6(i) does not impose a "great weight of other medical evidence standard"; and that Dr. D's initial certification should be adopted, as the amended report was not done for a proper

reason or within a reasonable time. As the carrier notes, we determined in Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, that Rule 130.6(i) would be applied immediately and that Rule 130.6(i) "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." We decline the carrier's invitation to reconsider our holding in that regard.

As noted above, Rule 130.6(i) provides that a designated doctor's amended report "is considered to have presumptive weight." The carrier argues that Rule 130.6(i) only provides a method for determining which report of a designated doctor is entitled to presumptive weight where, as here, there is more than one report from a designated doctor. The carrier further argues, however, that the hearing officer erred in applying the great weight of the other medical evidence standard in deciding whether the designated doctor's amended report, and, more specifically, the January 3, 2001, MMI date and the 16% IR should be adopted by the Commission. We find no merit in this assertion. By giving the amended report presumptive weight and using that language from the statute, Rule 130.6(i) necessarily references Sections 408.122 and 408.125 and establishes a system whereby the Commission is to adopt the MMI date and the IR from the designated doctor's report that is entitled to presumptive weight, unless the great weight of the other medical evidence is to the contrary. If the carrier's argument in this case were followed to its natural conclusion, there would be no method for overcoming the amended report of a designated doctor and that certainly cannot be the outcome sought by the carrier.

Finally, the carrier asserts that the hearing officer erred in determining that the claimant had disability from October 16, 1999, through January 3, 2001. Whether or not the claimant had disability was a question of fact for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE 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:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge