

APPEAL NO. 021299
FILED JULY 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 011409, decided July 30, 2001, the Appeals Panel, acting on the appeal of the respondent (claimant), reversed the May 29, 2001, decision and order of the hearing officer, which adopted the report of the designated doctor assigning the claimant an impairment rating (IR) of 13% for his lumbar spine injury from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). We remanded for the hearing officer to have the claimant reexamined by the designated doctor for range of motion (ROM) impairment because at the time the designated doctor examined the claimant on November 11, 1998, the claimant was still wearing a mandatory 24-hour lumbar brace, following his two-level laminectomy/discectomy with instrumentation and titanium cage implants on September 10, 1998, and was unable to be examined for abnormal ROM. The hearing officer held a remand hearing on February 20, 2002; took official notice of the record of the prior hearing on April 5, 2001; accepted the amended report of the designated doctor; and heard the parties' arguments. The hearing officer issued a new decision on April 30, 2002, adopting the amended report of the designated doctor, which assigns a 16% IR consisting of 11% under Table 49 (II)(F) and 6% under Table 50 for ankylosis. The appellant (carrier) has appealed, asserting that the hearing officer erred in adopting the designated doctor's amended report in that the 16% IR was not determined in accordance with the AMA Guides because it included the 6% ankylosis rating, which the designated doctor had previously refused to assign; and because of the lengthy period of time that passed between the date of statutory maximum medical improvement (MMI) (August 10, 1998) and the date of the reexamination (February 13, 2002), during which period the claimant was injured in a motor vehicle accident. The file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in adopting the amended report of the designated doctor. The pertinent evidence in this case, aside from the designated doctor's amended report, which is the only new evidence, is set out in our earlier decision in this case.

In Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, the Appeals Panel discussed the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), effective January 2, 2002, which provides in part that the response of a designated doctor to any request by the Texas Workers' Compensation Commission (Commission) for clarification "is considered to

have presumptive weight as it is part of the doctor's opinion." After some discussion of the intent of this rule, our decision states that "[t]he bottom line of this discussion is that we have a rule that went into effect on January 2, 2002, and that rule does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." *And see* Texas Workers' Compensation Commission Appeal No. 020400, decided March 21, 2002. Further, with respect to the carrier's contention that the designated doctor's assignment of a rating under Table 50 for ankylosis was not in accordance with the AMA Guides, we first observe that this is not a case where a rating under Table 50 was assigned after invalid ROM measurements. In our remand decision in this case, Appeal No. 011409, *supra*, we stated that the designated doctor "may elect to assign a rating under Table 50 if the claimant is determined by radiography to actually have ankylosis as discussed in our decisions, namely, immobility of both the lumbar spine and the hips." The carrier correctly notes that the designated doctor's amended report does not mention any radiography results. However, we note that the August 10, 1998, report of the claimant's surgeon, Dr. R, issued before the surgery, assigned the claimant an IR of 18%, consisting of 13% from Table 49 and 6% from Table 50, and stated that the claimant has radiographically determined ankylosis and will have a two-level fusion, which will fuse three lumbar vertebrae. In further regard to the carrier's complaint about the passage of time between the date of statutory MMI and the designated doctor's amended report, we note that there was no disputed issue before the hearing officer concerning the claimant's having waived his right to dispute the designated doctor's prior 13% IR nor was this contention raised by the carrier before we remanded the case for the reexamination.

Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designed doctor shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The carrier contends that the designated doctor's amended report itself constitutes the great weight of the other medical evidence because of its assignment of the Table 50 rating and the passage of time. However, we are satisfied that the hearing officer's determination that the claimant's IR is 16% 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge