APPEAL NO. 022056
FILED OCTOBER 3, 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 July 23, 2002. With respect to the single issue before him, the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 17%, as certified by the designated doctor in her second amended report. In its appeal, the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the designated doctor's second amended report and asks that we adopt the 14% IR of its peer review doctor. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and that she reached statutory maximum medical improvement on January 21, 2001. Initially, we consider the carrier's assertion that the hearing officer erred in determining the IR before the issue of whether the claimant's compensable injury includes the lumbar spine was resolved. Although we have previously recognized that extent-of-injury issues need to be resolved before the IR can be determined, we cannot agree that the hearing officer erred in this instance in resolving the IR issue. The carrier did not make the argument that the compensable injury did not include the low back at the hearing. To the contrary, the carrier's attorney at the hearing conceded that the claimant injured her right knee, right hip, and low back in the compensable injury. Accordingly, we find no merit in the assertion that this case should be remanded for resolution of the extent issue.

The carrier next argues that the 17% IR in the designated doctor's second amended report should not have been given presumptive weight because "it is contrary to the great weight of the other medical evidence and is so seriously flawed that it should be disregarded." It is undisputed that the claimant had a right hip replacement prior to her compensable injury. The hip prosthesis was loosened in the compensable injury. Dr. R, the designated doctor selected by the Texas Workers' Compensation Commission initially provided a 40% lower extremity rating for the loosened prosthesis. After Dr. R reviewed a second peer review report from Dr. W, she changed the 40% to a 20%, recognizing that the loosened prosthesis had been surgically repaired. While it might have been preferable if the designated doctor had made the change after she received Dr. W's first report, we cannot agree that her failure to do so requires that her IR be disregarded. Ultimately, the designated doctor assigned a 20% lower extremity rating for the replacement arthroplasty in the right hip, which is the same rating that Dr. W assigned for the replacement arthroplasty. Thus, the nature of the carrier's challenge to that element of Dr. R's rating is unclear.

Next, the carrier asserts that Dr. R erred in assigning a 10% rating under Table 36 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association for the surgically repaired meniscal tear in the right knee. The range in Table 36 for one torn meniscus and/or meniscectomy is 0 to 10%. The designated doctor assigned a 10% rating, which was at the high end of that range. Dr. W assigned a 0% for the right knee, and Dr. M, the carrier's required medical examination (RME) doctor, assigned a 5% rating for the right knee. The decision of what figure to assign within the range in Table 36 represents a matter of medical judgment. By giving presumptive weight to the designated doctor's opinion in Sections 408.123 and 408.125, the 1989 Act has established a system such that the designated doctor's resolution of a difference of medical opinion, as exists in this case, is adopted.

To the extent that the carrier asserts error in the assignment of a 5% rating for the lumbar spine, as opposed to simply arguing that the lumbar spine is not part of the compensable injury and, thus, is not ratable, we find no merit in that argument. The designated doctor changed her lumbar rating from a 7% to a 5% in response to Dr. W's peer review reports. Thus, both Dr. W and Dr. R assigned the same rating for the lumbar specific disorder and we cannot agree that the great weight of the other medical evidence is contrary thereto.

Lastly, the carrier argues that the designated doctor erred in assigning a 5% IR for the right leg length discrepancy. Both the claimant's treating doctor, Dr. L and Dr. M, the carrier's RME, noted the fact that the claimant's right leg is shorter than her left leg and each doctor attributed the discrepancy to the claimant's having had to undergo a second right hip arthroplasty as a result of the compensable injury. With the evidence in this posture, we find no merit in the assertion that the designated doctor improperly included a rating for the leg length discrepancy in the claimant's IR.

The hearing officer's decision and order are affirmed.

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

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

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Veronica Lopez
Appeals Judge