APPEAL NO. 022224
FILED OCTOBER 21, 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 8, 2002. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 3, 2000, with a 7% impairment rating (IR) as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant appeals the hearing officer's determinations on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant sustained a compensable injury to her lumbar spine on _____. She received conservative treatment for her injury. On August 3, 2000, the claimant was examined by the carrier's required medical examination doctor and was certified at MMI on August 3, 2000, with a 7% IR under 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). A designated doctor was appointed by the Commission. After examining the claimant, the designated doctor, likewise, certified the claimant at MMI on August 3, 2000, with a 7% IR for specific disorders of the spine under Table 49 of the AMA Guides. The designated doctor invalidated the claimant's range of motion (ROM) based upon clinical examination. The claimant's treating doctor later certified that the claimant had not reached MMI and recommended spinal surgery. The claimant underwent spinal surgery for her compensable injury on February 5, 2001. Following surgery, the claimant's treating doctor certified that the she reached MMI on April 20, 2001, with a 19% IR--comprised of 10% for loss of ROM in the lumbar spine and 10% under Table 49 of the AMA Guides. In response to a request for clarification from the Commission, the designated doctor reevaluated the claimant following spinal surgery. In his response, the designated doctor stated:

> It is my opinion that this patient has been through an intensive surgical procedure without any benefit. I think this was predictable at the time I examined the patient as a designated doctor. I believe by following the rules for MMI, which is a point in time in which in all medical probability the patient is not likely to improve any further, I think you could predict this at that time. Therefore I would not change the MMI date. I am not sure whether you are supposed to change the impairment rating or not, since she has had the surgery. If you change the rating, you still cannot give the patient but the 10% for Specific Disorders because she still invalidates all the other parameters. Since I have not changed the MMI date, I am not going to send a revised TWCC-69 because I believe that since I did not

> change the MMI date that there is an Appeals Panel ruling that says just because a patient had surgery after that MMI date it does not change the MMI date or the previously given impairment rating. However, if you feel it does change the impairment rating, I would be happy to do a revised TWCC-69.

The claimant asserts that the certification adopted by the hearing officer is not entitled to presumptive weight, in view of the designated doctor's response to the Commission's request for clarification and the treating doctor's contrary MMI/IR certification.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification is considered to have presumptive weight as it is part of the designated doctor's opinion. *See* Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. While the designated doctor in this case did not amend the date of MMI, we view his response to the Commission's request for clarification as expressing the opinion that an IR of 10% is medically appropriate for the claimant under Table 49 of the AMA Guides. The treating doctor's MMI/IR certification does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report but merely represents a difference in medical opinion. In accordance with Rule 130.6(i) and the evidence presented, we conclude that the claimant reached MMI on August 3, 2000, with a 10% IR.

The decision and order of the hearing officer are affirmed with regard to the date of MMI. The hearing officer's decision and order are reversed with regard to IR and a new decision rendered that the claimant's IR is 10%.

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

CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge