APPEAL NO. 022618
FILED NOVEMBER 27, 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 September 26, 2002. With respect to the issues before him, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on March 12, 1998 (statutory MMI), with an impairment rating (IR) of 16% as certified by the designated doctor in an amended report. In its appeal, the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the designated doctor's amended report and argues that the designated doctor's initial MMI date of February 17, 1997, and 9% IR should be adopted. The claimant's response essentially urges affirmance.

DECISION

Affirmed.

The facts in this case are largely undisputed. The parties stipulated that the claimant sustained a compensable injury on _____. The claimant's first certification of MMI and IR was assigned by a carrier required medical examination doctor, who certified that the claimant reached MMI on July 8, 1996, with a 7% IR. That certification was disputed and Dr. D was selected by the Texas Workers' Compensation Commission (Commission) to serve as the designated doctor. Dr. D certified that the claimant reached MMI on February 17, 1997, with a 9% IR. On August 16, 2000, the claimant underwent spinal surgery. At the request of the Commission, Dr. D reexamined the claimant and in a report dated December 10, 2001, Dr. D certified that the claimant reached statutory MMI with a 16% IR.

The hearing officer did not err in determining that the claimant reached MMI on March 12, 1998, with an IR of 16%, consistent with the designated doctor's amended certification. The carrier asserts that the adoption of the designated doctor's amended certification was improper because spinal surgery was not actively considered at the time of statutory MMI. Whether surgery was actively considered at the time of statutory MMI falls under the rubric of a "reasonable time and proper purpose" analysis. 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, without regard to whether an amendment was made for a proper purpose or within a reasonable time. *See also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. The evidence shows that the designated doctor's amended report was in response to a request for clarification from the Commission. The hearing officer accepted the amended MMI date and IR and found that it was not contrary to the great weight of other medical evidence. His determination in that regard 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 (Tex. 1986). Thus, the hearing officer did not err in giving the amended report presumptive weight in finding that the claimant reached MMI on March 12, 1998, with an IR of 16%.

We find no merit in the carrier's assertion that the request to have the designated doctor consider the effect of the claimant's surgery on his date of MMI and IR was not a request for clarification within the meaning of Rule 130.6(i). Many of the requests made by the Commission to the designated doctor are similar to that made here. Namely, there had either been additional treatment or another report has been issued that in some way questions the designated doctor's report. As a matter of course, the additional medical record and reports are frequently sent to the designated doctor for him to consider the impact, if any, of those records on his certification. Those requests often lead to a reexamination and an amendment of the designated doctor's report. We are unprepared to say that the Commission did not intend to bring this well-established practice within the coverage of Rule 130.6(i) in deciding to give amendments presumptive weight and the carrier's argument to that effect is unpersuasive.

To the extent that the carrier is arguing that Rule 130.6(i), and our interpretation of that rule, are violative of the statute, we note that we do not have the authority to consider such an argument. That argument would be properly pursued in the district court.

The hearing officer's decision and order 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

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

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge