APPEAL NO. 023159
FILED FEBRUARY 3, 2003

This appeal after remand 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 August 15, 2002. The hearing officer determined that the impairment rating (IR) of the appellant (claimant herein) is 10%. The respondent (self-insured herein) appealed the hearing officer's determination and contended that the hearing officer should have given presumptive weight to the first report of Dr. R, the designated doctor. The claimant appealed the hearing officer's determination and contended that the hearing officer should have given presumptive weight to the designated doctor's second report. The self-insured responded to the claimant's first appeal, however, the appeal file contained no response from the claimant to the carrier's first appeal. The Appeals Panel reversed the hearing officer's decision and order and remanded the case to the hearing officer to reconsider the IR issue after obtaining and considering the letter of clarification sent to the designated doctor and the designated doctor's response letter to the Texas Workers' Compensation Commission (Commission). Texas Workers' Compensation Commission Appeal No. 022300, decided October 30, 2002. On remand, the hearing officer obtained these documents and determined that the claimant's IR is 7%, in accordance with the first report of the designated doctor. No hearing on remand was held. On appeal, the claimant contends that the designated doctor did not perform repeat range of motion (ROM) testing, that the designated doctor did not consider "new medical evidence," and that the designated doctor did not properly apply the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The carrier responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

The facts and procedural history are set forth in our prior decision in this case and will not be repeated here. On appeal, the claimant contends that the hearing officer erred in according presumptive weight to the designated doctor's report and response letter and in determining that the claimant's IR is 7%. The claimant asserts that the designated doctor did not perform repeat ROM testing, that the designated doctor did not consider "new medical evidence," and that the designated doctor did not properly apply the AMA Guides. In his first report dated October 19, 2001, the designated doctor explained that the 7% IR was awarded for specific disorders of the spine and that the claimant was not assigned a rating for ROM, as the measurements obtained were invalidated by the claimant's sub-optimal effort. The Commission sent a letter of clarification to the designated doctor on December 4, 2001, inquiring about whether the designated doctor performed repeat ROM testing and whether the designated doctor measured the claimant's lateral ROM. The designated doctor responded in a letter

dated December 13, 2001, stating that he had not completely recorded the ROM test results and attached a corrected worksheet indicating that he performed repeat ROM testing and also tested the claimant's lateral flexion ROM. The hearing officer could find from the evidence that the designated doctor did perform repeat ROM testing. Further, the Appeals Panel set forth in its first decision why repeat ROM testing is not necessary in all instances. Regarding the claimant's assertion that "new medical evidence" was not considered, the claimant does not explain what evidence he refers to. Accordingly, we perceive no error in this regard. The claimant asserts that the designated doctor did not properly rate his injury under the AMA Guides. The designated doctor awarded 7% impairment under Table 49 (II)(C) of the AMA Guides for specific disorders of the lumbar spine. We perceive no error.

The claimant asks that the IR recommended by his treating doctor be adopted. However, the report of a Commission-selected designated doctor is given presumptive weight with regard to maximum medical improvement status and IR. Sections 408.122(c) and 408.125(e). We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993. We perceive no error in this regard.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CEO**
**(ADDRESS)**
**(CITY), TEXAS (ZIP CODE)**.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Roy L. Warren
Appeals Judge