APPEAL NO. 023265
FILED FEBRUARY 10, 2003

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 November 21, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on June 27, 1994, and that her impairment rating (IR) is 17%. The appellant (carrier) appealed, arguing that the hearing officer's IR determination is against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The carrier contends that the report from the designated doctor, Dr. O, was not amended within a reasonable period of time; that the report did not address the compensable injury; that the Texas Workers' Compensation Commission (Commission) abused its discretion by sending the claimant back to the designated doctor without clarification of the applicable areas to be evaluated; and that the hearing officer rendered a decision based on an IR that did not evaluate the affected areas of the compensable injury. The file does not contain a response from the claimant. The hearing officer's MMI determination was not appealed and that determination has become final pursuant to Section 410.169.

DECISION

Affirmed, as reformed.

The parties stipulated that the claimant sustained a compensable injury on _____; that in a report dated July 28, 1994, Dr. O certified that the claimant reached MMI on June 27, 1994, with a 5% IR; that in a report dated May 20, 2002, Dr. O certified that the claimant reached MMI on May 20, 2002, with a 17% IR; and that the claimant reached "statutory" MMI on June 27, 1994.

The claimant testified that she injured her neck, back, and right upper extremity on _____. On July 28, 1994, Dr. O assessed the claimant's compensable right shoulder and arm injury and determined that the claimant reached MMI on June 27, 1994, with a 5% IR based on a 5% impairment for flexion and a 4% impairment for abduction, which is a 9% impairment of the right upper extremity combined to form 5% whole body IR using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. The claimant contended that she was not at MMI because she had two surgeries (spinal surgery and carpal tunnel release) after Dr. O certified that she had reached MMI on June 27, 1994. In May 2002, at the request of the claimant, the Commission sent her to Dr. O to reevaluate her IR based on her cervical spine, right shoulder, and carpal tunnel release. On May 2, 2002, Dr. O determined that the claimant reached MMI with a 17% IR based on a 11% impairment from Table 49, Section (II)(E) (9% impairment for surgically treated disc lesion, with residual symptoms and Section (II)(G) and 1% impairment for multiple operations ("failed back surgery")

with or without residual symptoms) and 7% impairment from Table 50 for ankylosis for four fused vertebrae, combined to form a 17% whole body IR. On June 12, 2002, the carrier filed a Request for a Benefit Review Conference (TWCC-45) stating that the "[c]arrier is disputing the current Designated Doctor [Report of Medical Evaluation (TWWC-69)] from Dr. [O]. Carrier contends that the claimant was at MMI on 6-27-94 and 401 weeks has expired. Carrier contends that the claimant was rated for conditions not related to the _____ injury. "

The carrier contends that Dr. O did not amend his report within a reasonable period of time. In Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, we held that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § (Rule 130.6(i)) Rule 130.6(i) "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." Rule 130.6(i) provides that a designated doctor's response to any Commission request for clarification is considered to have presumptive weight, as it is part of the designated doctor's opinion. The hearing officer commented that Rule 130.6(i) applies and he concluded that Dr. O's May 20, 2002, report was entitled to presumptive weight and was not contrary to the great weight of the other medical evidence. The hearing officer determined that the claimant's IR is 17% as determined by Dr. O in his amended report dated May 20, 2002. (We note that the hearing officer lists two Findings of Fact No. 7. The latter should be Finding of Fact No. 8 and we so reform the decision.)

As to the carrier's contention that the Commission abused its discretion by sending the claimant back to the designated doctor for a re-evaluation of the claimant's IR, we find no abuse of discretion. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986) for what constitutes an abuse of discretion. The record does not show that the hearing officer acted without reference to any guiding rules or principles.

Accordingly, the hearing officer's decision and order are affirmed, as reformed.

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

BEN SCHROEDER
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge