APPEAL NO. 030127
FILED FEBRUARY 26, 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 January 3, 2003. The hearing officer resolved the disputed issues by deciding that respondent's (claimant) date of maximum medical improvement (MMI) and impairment rating (IR) cannot be determined because the great weight of the other medical evidence is contrary to the report of the designated doctor and no other certification can properly be the basis for determining MMI and IR. The hearing officer determined that it is appropriate to appoint a second designated doctor in this case to determine both the date of MMI and an IR. The appellant (carrier) appealed, arguing that the great weight of the other medical evidence is not contrary to the opinion of the designated doctor and that the hearing officer inappropriately held that a second designated doctor should be appointed. The carrier argues the designated doctor should have been given an opportunity to respond to the new concerns and questions brought up by the claimant. The claimant responded, urging affirmance.

DECISION

Affirmed.

Section 408.125(e) provides that if the designated doctor is chosen by the Texas Workers' Compensation Commission (Commission), the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors.

The hearing officer determined that the great weight of the other medical evidence was contrary to Dr. M certification of MMI and IR because of the claimant's prestatutory MMI surgery on July 10, 2002, and Dr. M's failure to comply with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) regarding the effect of the straight leg raise (SLR) on impairment for loss of lateral flexion.

The parties stipulated that the claimant sustained a compensable injury on _____. The evidence reflected that the designated doctor selected by the Commission, Dr. M, examined the claimant on August 1, 2001, and certified MMI on that date with an IR of 5% based on Table 49 Subsection (II)(b). No recorded measurements of range of motion (ROM) were included in Dr. M's report, although Dr. M stated that ROM of the cervical and lumbar spine were both invalid. The lumbar ROM "was invalid based on the SLR rule." As the hearing officer noted, it is unclear

from the designated doctor's report whether he used the SLR test to invalidate both forward and lateral flexion and extension.

On May 17, 2001, an MRI was performed and on August 27, 2001, a myelogram was done. The designated doctor's examination was on August 1, 2001. The claimant underwent surgery to her lumbar spine on July 10, 2002. Subsequently, a letter of clarification, dated August 16, 2002, was forwarded to Dr. M asking in part if the surgery changed the doctor's opinion of the date of MMI and IR. Dr. M replied, stating that the surgery was performed eleven months after she reached MMI and he would not request a reevaluation of the claimant regarding changes in MMI and IR. The claimant testified that her condition improved after surgery was performed. The medical records in evidence also indicate that the claimant's condition improved after surgery was performed. There is evidence that the claimant was receiving treatment and testing at the time of the designated doctor's exam.

The Appeals Panel has held that a designated doctor should not be replaced by a second designated doctor absent a substantial basis for doing so. Normally, the appointment of a second designated doctor is appropriate only in those cases where the first designated doctor is unable or unwilling to comply with the required AMA Guides or requests from the Commission for clarification or if he or she otherwise compromises the impartiality demanded of the designated doctor. *See* Texas Workers' Compensation Commission Appeal No. 990186, decided March 11, 1999, and Texas Workers' Compensation Commission Appeal No. 961228, decided August 8, 1996. There was no other certification of MMI or IR by another doctor in evidence and Dr. M has refused to reexamine the claimant or consider her prestatutory MMI spinal surgery.

In this case the hearing officer explained why he determined the great weight of the other medical evidence was contrary to the designated doctor's report. We conclude that the hearing officer's determinations have sufficient legal and factual support and are not so against the great weight and preponderance of the evidence of the law as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W. 2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

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

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Roy L. Warren
Appeals Judge