

APPEAL NO. 030655  
FILED APRIL 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 January 28, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on April 19, 2002, with a 10% impairment rating (IR) as assessed by the designated doctor, whose opinion was not contrary to the great weight of the other medical evidence.

The claimant appeals the MMI date, contending that his condition has improved subsequent to April 2002 and that since the designated doctor amended her report increasing the IR she should also have changed the MMI date. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed

The parties stipulated that the claimant, a delivery driver, "sustained a compensable abdominal contusion and compensable aggravations of prior cervical and lumbar injuries" on \_\_\_\_\_.

Dr. Z, the designated doctor, in a Report of Medical Evaluation (TWCC-69) and narrative dated April 19, 2002, certified MMI on that date and assessed a 5% IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). The IR was based on a 5% impairment from Table 73, DRE Category II (Cervicothoracic Spine Impairment Categories) and 0% impairment from Table 72, DRE Category I (Lumbosacral impairment). No objective sensory or motor deficits were noted. The treating doctor initially agreed with the MMI date but disagreed with the IR. The Texas Workers' Compensation Commission (Commission) wrote the designated doctor enclosing one of the treating doctor's reports and asked if it changed the IR. Dr Z replied by letter dated June 26, 2002, stating that in her opinion the claimant's abdominal contusion was not a permanent condition and was not ratable. Dr Z stood on her 5% IR with the April 19, 2002, MMI date.

After a benefit review conference the Commission again wrote the designated doctor by letter dated September 12, 2002, forwarding a lumbar MRI report dated January 14, 2002, and stating that the claimant argues that he has had documented muscle spasms. Another doctor's report and another lumbar MRI report of July 24, 2002, were also forwarded. Dr Z replied by letter dated September 23, 2002, that the claimant did not have muscle spasms when she examined him on April 19, 2002, but noted that the lumbar MRIs revealed a right posterolateral disc herniation at L4/5 and that based on the new information Dr. Z "would award the claimant with a 5% whole

person impairment from Table 72, DRE Category II” which changes the claimant’s IR to 10%. A new TWCC-69 was prepared which again certified MMI on April 19, 2002, with a 10% IR.

The hearing officer commented that the claimant’s and the treating doctor’s assertions that the claimant had experienced continuous improvement after April 19, 2002, are “not corroborated by objective evidence” and that medical reports of a later MMI date “did not constitute more than a difference of medical opinion with the designated doctor.” Section 408.122(c) provides that the report of the designated doctor has presumptive weight that can only be overcome by the great weight of the other medical evidence to the contrary. The treating doctor’s opinion in this case does not constitute such a great weight, nor does the designated doctor’s amendment of the IR, based on MRIs that she had previously not been provided, require a change in the MMI date. We would also note that 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 also has presumptive weight.

The hearing officer’s determinations on MMI and IR are supported by sufficient evidence and are 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, 176 (Tex. 1986).

The hearing officer’s decision and order are affirmed.

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

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Daniel R. Barry  
Appeals Judge

---

Elaine M. Chaney  
Appeals Judge