

APPEAL NO. 030919
FILED JUNE 4, 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 March 4, 2003. With respect to the issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on November 12, 2001, with an impairment rating (IR) of 8% as certified by Dr. R, the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's report and asks that we adopt his treating doctor's certification of statutory MMI and an 18% IR. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. Dr. R was selected by the Commission to serve as the designated doctor. Dr. R first examined the claimant on September 11, 2000, and certified that the claimant reached MMI as of that date with a 1% IR for loss of right lateral flexion range of motion (ROM). On March 31, 2001, the claimant underwent spinal surgery, specifically a fusion at L5-S1, which was performed by Dr. M. On November 12, 2001, Dr. R reexamined the claimant to determine MMI and IR taking into account the claimant's spinal surgery. Dr. R certified MMI on November 12, 2001, with an IR of 5%. Dr. R incorrectly used 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) (fourth edition) to determine that claimant's IR at the November 12, 2001, examination; thus, Dr. R was asked to determine the claimant's IR using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (third edition). Dr. R maintained the November 12, 2001, MMI date but changed the claimant's IR to 8% for a specific disorder of the lumbar spine. Dr. R invalidated ROM based upon observation that the claimant gave suboptimal effort during ROM testing. Dr. M completed a letter expressing his disagreement with Dr. R's certification of MMI and IR. That letter was forwarded to Dr. R and in response to it, Dr. R stood by his certification. On September 27, 2002, after the claimant passed the date of statutory MMI, Dr. M certified that the claimant reached statutory MMI and assigned an 18% IR, which was comprised of 10% under Table 49 of the third edition for a specific disorder of the lumbar spine, 5% for loss of lumbar ROM, and 3% for sensory deficits.

The hearing officer did not err in giving presumptive weight to the designated doctor's report, and in determining the claimant's MMI date and IR in accordance with

that report. The difference in the ratings of the treating doctor and the designated doctor is attributable to a difference of opinion as to when the claimant reached MMI and whether he was entitled to a rating for loss of lumbar ROM and sensory deficits. We cannot agree that the evidence from the treating doctor constitutes the great weight of the other medical evidence contrary to the designated doctor's report. Rather, this is a case where there is a genuine difference of medical opinion between the designated doctor and the treating doctor. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report and adopting the November 12, 2001, MMI date and 8% IR.

The hearing officer's decision and order are affirmed.

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

**BOB TALLEY
PARAGON CENTER ONE
450 GEARS ROAD, SUITE 400
HOUSTON, TEXAS 77067.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge