

APPEAL NO. 031041
FILED JUNE 17, 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 originally held on October 17, 2002. In Texas Workers' Compensation Commission Appeal No. 022770, decided December 17, 2002, the Appeals Panel remanded the case for the appointment of a designated doctor who specializes in lung disorders, citing a provision in 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) (AMA Guides), which provides that respiratory impairment should be evaluated by physicians with expertise in lung disease. Subsequently, Dr. C was appointed as a second designated doctor and in a report dated February 4, 2003, certified maximum medical improvement (MMI) on that date with a 15% impairment rating (IR). The (appellant) carrier disputed that assessment and a hearing on remand was held (after at least one continuance) on April 3, 2003, with (hearing officer) again presiding as the hearing officer. The hearing officer adopted the assessment of Dr. C, the designated doctor's MMI date of February 4, 2003, and the 15% IR.

The carrier has appealed, contending that Dr. C is not a pulmonologist and that a peer review doctor (an orthopedic surgeon) was of the opinion that an IR should not be assessed until a pulmonologist has performed pulmonary function studies and given an assessment. The file does not contain a response from the (respondent) claimant in the case on remand.

DECISION

Affirmed.

The background facts of this case are set out in Appeal No. 022770 and will not be repeated. In response to the remand, Dr. C, a D.O., was appointed as the designated doctor. Dr. C's letterhead indicates that he is certified in allergy and clinical immunology, internal medicine, and in occupational medicine and is certified in Texas Workers' Compensation Commission examinations. The occupational medicine specialty does have a lung and respiratory disease component. Furthermore the hearing officer, with the agreement of the parties, contacted Dr. C's office and spoke with Dr. C's nurse. Although this testimony was not sworn, neither party objected and indeed both parties participated in formulating questions to be asked of the nurse. The nurse said that Dr. C "treats a lot of lung disorders," that he sees patients with "chemical inhalation" injuries, that they have the "capability to do pulmonary function testing" and that Dr. C has "expertise in lung disease." The hearing officer made a finding that Dr. C specializes in lung disorders. The evidence supports that finding.

We have reviewed Dr. C's report and believe it to be thorough, knowledgeable, and in accordance with the AMA Guides, the peer review doctor's opinion notwithstanding. The other medical evidence does not constitute the great weight of other medical evidence to the contrary of Dr. C's opinion. The hearing officer did not err in adopting Dr. C's assessment.

The hearing officer's decision is 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).

Accordingly, the decision and order of the hearing officer are affirmed.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge