APPEAL NO. 031399
FILED JULY 9, 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 (CCH) was held on April 28, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on June 6, 2002, with a 5% impairment rating (IR) as assessed by the designated doctor whose report was not contrary to the great weight of other medical evidence.

The claimant appeals, asserting the designated doctor's report "is wrong," that she has not reached MMI and that spinal surgery subsequent to the designated doctor's report warrants a higher IR. Attached to the claimant's appeal is a report from a medical doctor indicating an evaluation after the CCH of "a healing L5 radiculopathy bilaterally." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____, that Dr. M was the Texas Workers' Compensation Commission (Commission)-selected doctor, and that Dr. M certified MMI on June 6, 2002, and assigned a 5% IR. It appears undisputed that 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) was the proper edition to be used and that the claimant underwent spinal surgery by Dr. Z on October 25, 2002.

Dr. M is a chiropractor and in his report of June 6, 2002, he certified MMI on that date and assessed an IR of 5% based on DRE Lumbosacral Category II. Dr. M noted no loss of motor strength. The claimant's treating doctor, Dr. LM disagreed with the designated doctor's report and in a rebuttal letter dated November 6, 2002, pointed out that the claimant had had spinal surgery after Dr. M's report, and that therefore the claimant was not at MMI. Dr. LM's rebuttal letter was sent to the designated doctor who responded by letter dated November 12, 2002, stating:

> Under the 4th Edition of the Guides, and utilizing the DRE model, although the patient may have a subsequent surgery, the impairment rendered under the DRE model would not change. Although there would be some recovery expected following a surgical procedure, under these circumstances the date of MMI may also remain unchanged.

There was another rebuttal letter from the treating doctor disputing whether there was radiculopathy and/or loss of segmental integrity.

Regarding the new medical evidence submitted for the first time on appeal, the Appeals Panel has held that it will generally not consider evidence that was not submitted into the record at the hearing and is raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). While the report does have relevance, there was no showing that with due diligence it could not have been obtained sooner. Consequently, we hold that it does not meet the standard of requiring a remand.

On the merits, Sections 408.122(c) and 408.125(c) of the 1989 Act provide that a report of a Commission-appointed designated doctor shall have presumptive weight on the issues of MMI and IR and the Commission shall base its determination on such report unless the great weight of other medical evidence is to the contrary. The hearing officer determined that the great weight of other medical evidence "is not contrary" to the designated doctor's certification of MMI and IR. The hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Sections 408.122(c) and 408.125(c).

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

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Veronica Lopez-Ruberto
Appeals Judge

_____
Edward Vilano
Appeals Judge