

APPEAL NO. 031406
FILED JULY 22, 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 8, 2003, and continued with the record closing on May 8, 2003. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent's (claimant) date of maximum medical improvement (MMI) is April 23, 2002, as certified by Dr. S, the Texas Workers' Compensation Commission (Commission)-selected designated doctor; and that the claimant's impairment rating (IR) is 19% as certified by Dr. S (as amended in his report). The claimant appealed, arguing that the hearing officer's determination as to the IR is against the great weight and preponderance of the evidence. The respondent/cross-appellant (carrier) appealed the hearing officer's MMI and IR determinations, asserting that the designated doctor's report and clarification do not have presumptive weight and requesting that we adopt the certification of Dr. A, the required medical examination (RME) doctor, that the claimant reached MMI on July 10, 2000, with a 4% IR. The claimant responded to the carrier's appeal; there is no response from the carrier to the claimant's appeal.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and that the designated doctor, Dr. S, certified that the claimant reached MMI on April 23, 2002, with an IR of 23%. It is undisputed that Dr. A, the RME doctor, examined the claimant on November 5, 2002, and he certified that the claimant reached MMI on July 10, 2000, with a 4% IR; that Dr. M, the treating doctor reported that the claimant reached MMI on April 23, 2002, with a 16% IR; and that Dr. O, the peer review doctor, opined that the correct IR is 6%. The Commission sent two letters of clarification to Dr. S regarding the claimant's IR and Dr. S declined to change the 23% IR he assigned in accordance with 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). The claimant argued at the CCH that the certification of Dr. S that claimant reached MMI on April 23, 2002, with a 23% IR has presumptive weight. The carrier's position at the CCH was that Dr. S misapplied the AMA Guides in that he rated the claimant's adjustment disorder inappropriately. At the CCH, the hearing officer held the record open and sent a letter of clarification to Dr. S regarding the carrier's contentions. In response to that letter, Dr. S submitted an amended Report of Medical Evaluation (TWCC-69), dated April 28, 2003, and attached a report amending the IR to 19% by deleting the 5% IR that he had previously given for the adjustment disorder.

Section 408.125(e) provides that if the designated doctor is chosen by the 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. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) Rule 130.6(i)), the designated doctor's response to a Commission request for clarification is also considered to have presumptive weight as it is part of the designated doctor's opinion. See also Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002.

The carrier argues that the designated doctor's report and response to a request for clarification do not have presumptive weight because Dr. S did not explain the reason why he amended his report by deleting an IR for the adjustment disorder. The carrier additionally notes that Dr. S did not change the date of his report to reflect the date that he amended his IR. The evidence reflects that Dr. S submitted an amended TWCC-69, dated April 28, 2003, and attached an amended report that rates the claimant's compensable injury, dated August 8, 2003. We note that although Dr. S's amended report is dated August 8, 2002, the report reflects a change in the IR to 19% that corresponds to the TWCC-69 that is dated April 28, 2003. The hearing officer could conclude from Dr. S's TWCC-69 and the amended report that the designated doctor found it was appropriate not to rate the adjustment disorder, and in doing so, amended the claimant's IR to 19% whole body IR by deleting the 5% IR he had previously given for the adjustment disorder. The hearing officer found the amended report of Dr. S was in accordance with the AMA Guides. The hearing officer determined that the designated doctor's MMI date of April 23, 2002, and the amended certification of a 19% whole body IR were not contrary to the great weight of the other medical evidence. 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 decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATE SERVICES COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge