APPEAL NO. 031551
FILED AUGUST 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 (CCH) was held on May 20, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on July 1, 2000, with a 14% impairment rating (IR) as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed, contending that she reached MMI on August 4, 2000, with an 18% IR as certified by the designated doctor in a previous evaluation. No response was received from the respondent (carrier).

DECISION

Affirmed.

For the most part, the facts in this case are not in dispute. The claimant sustained a compensable injury on _____. Her treating doctor, gave her a 24% IR on August 1, 2000. The carrier disputed this rating and the Commission sent the claimant to a designated doctor, Dr. S, for his evaluation on October 31, 2000. Dr. S noted July 1, 2000, as the date of MMI and gave the claimant a 23% IR which included an elbow injury that was not part of the compensable injury. In a response to a letter of clarification from the Commission, Dr. S did a second evaluation, disregarding the claimant's elbow injury, and amended the claimant's IR to 21% on April 17, 2001. Upon a second request, Dr. S reexamined the claimant and issued a third rating of 18% on September 14, 2001. The hearing officer noted that reexamination was certainly in order since the claimant had additional surgery since Dr. S's first examination. The Commission forwarded another peer review to Dr. S which resulted in a 14% IR. The peer review included a reference to 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) (4th edition) as an aid in resolving IR issues when using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (3rd edition).

The hearing officer found that the designated doctor's certification that the claimant reached MMI on July 1, 2000, with a 14% IR is not contrary to the great weight of the other medical evidence, and concluded that the claimant reached MMI on July 1, 2002, with a 14% IR as certified by the designated doctor. The claimant argues that the designated doctor's IR is not entitled to presumptive weight because he read a peer review referencing the 4th edition of the Guides when the 3rd edition of the Guides is the only proper edition to use in this case since an IR was awarded prior to October 15, 2001. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(2)(B)(ii) (Rule 130.1(c)(2)(B)(ii)). While we agree that the 3rd edition is the proper edition of the Guides to use in awarding this claimant an IR, we do not agree that the designated

doctor's final IR is tainted and not entitled to presumptive weight because he read a peer review referencing the 4th edition of the Guides. We also note that pursuant to Rule 130.6(i), a designated doctor's response to a request for clarification is given presumptive weight. Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002.

Sections 408.122 and 408.125 of the 1989 Act provide that a report of a Commission-selected 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. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor, is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record 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 true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

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

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

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Robert W. Potts
Appeals Judge