

APPEAL NO. 031619
FILED JULY 31, 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 6, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on May 1, 2002, with a 0% impairment rating (IR) as assessed by a designated doctor, whose reports were not contrary to the great weight of other medical evidence.

The claimant appealed, asserting error that the hearing officer abused his discretion in denying the claimant's request to take a deposition on written questions of the designated doctor, that the designated doctor was not qualified under Section 408.0041(b) to assess an IR, and that the great weight of the medical evidence was contrary to the assessment of the designated doctor. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable neck injury on _____. (The hearing officer's Statement of the Evidence also discusses prior neck injuries in 1999 and July 2001.) An MRI was performed on October 23, 2001, which showed disc bulges at most levels of the cervical spine and a "central disc protrusion with minimal thecal sac impingement" at C3-4. The claimant was being treated by a chiropractor, who eventually referred the claimant to Dr. D, a physical medicine and rehabilitation specialist who performed EMG testing. In an EMG report dated January 31, 2002, Dr. D interpreted the study as "abnormal" and "is suspicious for a right C6 cervical radiculopathy." The claimant was referred to Dr. M, an orthopedic surgeon who, in a report dated April 23, 2002, noted neck pain. Dr. M testified at the CCH that his findings on April 23, 2002, were consistent with the EMG. Dr. M also testified that he would have ordered a myelogram and if it was positive, then a discogram, which would have to be negative before Dr. M would declare the claimant at MMI. The claimant was also referred to Dr. K, who saw the claimant on April 23, 2002, and recommended a series of epidural steroid injections.

The carrier requested that the Texas Workers' Compensation Commission (Commission) appoint a designated doctor to determine MMI. The Commission appointed Dr. R, who, in a Report of Medical Evaluation (TWCC-69) and narrative dated May 1, 2002, certified MMI on that date and assessed a 0% IR, based on DRE Cervicothoracic Category I of 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). Dr. R stated that there was "no objective evidence of radiculopathy" and opined that the

claimant's problem was degenerative disc disease. The treating chiropractor disagreed with Dr. R's assessment in a report dated June 26, 2002. That letter was apparently sent to Dr. R, and Dr. R responded by letter dated July 30, 2002, in which he described tests which "speaks against a C6 radiculopathy." Dr. R concludes that it is clear that the claimant "does not have a C6 radiculopathy caused by a cervical disc injury" referring to "the MRI of 10/23/2001 which shows degenerative disc disease and multiple level bulges with a protrusion at C3/4. This level cannot give C6 radiculopathy." Dr. M, on cross-examination at the CCH, agreed that a protrusion at C3-4 would not cause radiculopathy at C6. The doctors appear to agree that radiculopathy in the AMA Guides requires signs of loss of relevant reflexes and unilateral atrophy of greater than a 2 cm decrease in circumference verified by EMG. There were no notations of loss of reflexes or atrophy (of greater than 2 cm) in the claimant, with only the EMG being "suspicious" for right C6 radiculopathy.

One of the claimant's arguments at the CCH, and on appeal, is that the designated doctor, as a general practice medical doctor, was not qualified to be the designated doctor under Section 408.0041(b), which provides in relevant part that the designated doctor should be one:

[W]hose credentials are appropriate for the issue in question and the injured employee's medical condition. The designated doctor doing the review must be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of practice of the designated doctor.

The claimant attempted to have the hearing officer send a deposition on written questions to the designated doctor, which questioned the doctor on whether he had "ever performed orthopedic surgery" and how "many cervical spine surgical procedures" he had performed in the last year. (We note that the claimant has not had spinal surgery.) The hearing officer did not err in denying the request for the deposition on written questions. Fairly clearly, the questions had little or no relevance to the medical aspects of this particular case. The hearing officer provided the claimant with the Designated Doctor Application (TWCC-72) matrix used in appointing the designated doctor and determined that Dr. R appeared knowledgeable of spinal problems and the AMA Guides in his reports. The hearing officer did not err as a matter of law. His decision to accept Dr. R as the designated doctor and deny the depositions on written questions is supported by sufficient evidence.

On the merits of whether or not the claimant reached MMI on May 1, 2002, with a 0% IR, the designated doctor's opinion was not contrary to the great weight of the medical evidence. Regarding the claimant's argument that he is not at MMI because various doctors want to conduct further tests and further treatment may be needed, the Appeals Panel as held that additional medical treatment after MMI does not preclude a certification of MMI. Texas Workers' Compensation Commission Appeal No. 94036, decided February 14, 1994, and Texas Workers' Compensation Commission Appeal

No. 011296, decided July 17, 2001. Whether the claimant's IR should be 0% under DRE Cervicothoracic Category I or 15% under DRE Cervicothoracic Category III depends on the presence of radiculopathy. Although there was some "suspicion" of C6 radiculopathy, the designated doctor found no objective evidence of radiculopathy (loss of relevant reflexes or unilateral atrophy). The hearing officer found that the great weight of other medical evidence was not to the contrary of the designated doctor's reports of May 1 and July 30, 2002. We agree.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations 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).

We affirm the hearing officer's decision and order.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge