

APPEAL NO. 031712
FILED AUGUST 20, 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 held on May 2, 2003. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 20%. The appellant (carrier) appeals this determination. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The carrier argues on appeal that the hearing officer erred in adopting the 20% IR assigned by the designated doctor, Dr. M, because he "failed to follow the requirements of the Labor Code in assigning the [c]laimant's [IR]." Specifically, the carrier asserts that because Dr. M assigned a rating for loss of motion segment integrity based on x-rays that were taken prior the claimant's spinal surgery, the IR is not based on a permanent condition. We disagree. Section 3.3d (p. 100) 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) provides:

With the Injury Model [also called the DRE Model], surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favorable or unfavorable response to the treatment.

Accordingly, it was not error for Dr. M to rely on the presurgery x-rays in order to make the determination that the claimant had a loss of motion segment integrity and that her condition warranted a rating under DRE Lumbosacral Category IV of the AMA Guides.

Section 408.125(e) provides that if a designated doctor is chosen by the Texas Workers' Compensation Commission (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, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides in part that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight, as it is part of the doctor's opinion. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July

15, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Nothing in our review of the record indicates that the hearing officer's IR determination is 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 **GRAPHIC ARTS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge