

APPEAL NO. 031943
FILED SEPTEMBER 11, 2003

This appeal after remand 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 March 24, 2003. The hearing officer determined that appellant (claimant) reached maximum medical improvement (MMI) on April 20, 1998, with an impairment rating (IR) of 5%, as certified by the treating doctor, Dr. D. Claimant appealed the hearing officer's determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. In Texas Workers' Compensation Commission Appeal No. 030936, decided May 30, 2003, the Appeals Panel reversed the hearing officer's decision and remanded for reconsideration of the MMI and IR issues. The Appeals Panel: (1) determined that claimant did not waive the right to dispute the treating doctor's IR by waiting to request a designated doctor; (2) reversed the hearing officer's determination that the designated doctor's report was not entitled to presumptive weight; and (3) reversed the hearing officer's determination that the great weight of the other medical evidence is contrary to the designated doctor's report. On remand, the hearing officer gave presumptive weight to the designated doctor's report and determined that claimant reached MMI on November 27, 1999, with an IR of 16%. Carrier appeals, contending that the hearing officer erred in giving presumptive weight to the report of the designated doctor. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier again raises the argument that claimant waived the right to a designated doctor, but this contention was addressed in our prior decision and we will not address it again. Carrier contends that the designated doctor could consider the IR at the time of MMI and no other date; that the designated doctor should not have considered the surgery because it was not contemplated as of the date of statutory MMI; and that the only valid IR is that of the treating doctor. In Texas Workers' Compensation Commission (Commission) Advisory 2003-10 (signed July 22, 2003), it states that, "In the Texas workers' compensation system, the injured employee's [IR] is based on the employee's condition on the date of [MMI] or the date of statutory [MMI], whichever is earlier." In this case, the designated doctor had not been selected as of the date of statutory MMI. There was evidence that claimant's condition was not stable between the March 1998 certification by the treating doctor and the date of statutory MMI. Section 408.125 states, in pertinent part, that if an impairment rating is disputed, the Commission shall direct the employee to the next available doctor on the Commission's list of designated doctors and that the report of the designated doctor shall have presumptive weight. The assignment of an IR for a compensable injury must be based on the employee's medical record and the certifying examination. Tex. W.C. Comm'n,

28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)). Given the particular facts of this case, we perceive no reversible error.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge