

APPEAL NO. 032263
FILED OCTOBER 17, 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 14, 2003, with (hearing officer 1) presiding as hearing officer. Hearing officer 1 continued the CCH so that clarification could be obtained from the Texas Workers' Compensation Commission (Commission)-appointed designated doctor, Dr. F. The CCH was completed on July 30, 2003, with (hearing officer 2) presiding as hearing officer. Hearing officer 2 resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on June 11, 2003, with a 14% impairment rating (IR) as certified by the claimant's treating doctor, Dr. B. The appellant (carrier) appealed hearing officer 2's determinations based on sufficiency of the evidence grounds. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. Dr. F certified that the claimant reached MMI on October 4, 2002, with a 0% IR under 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). Dr. F noted in his report that the "[r]ange of motion of the wrist was within normal limits with normal neurologic examination." The evidence reflects that the claimant underwent surgery to her right wrist on December 2, 2002. The operative report noted a tear in both the scapholunate ligament and the luno triquetral ligament.

In response to a letter from the Commission requesting clarification, Dr. F stated in an addendum dated May 8, 2003, that he had reviewed the medical records provided and did not change his previous assessment of MMI and IR. Dr. F responded to specific questions put forth by the Commission in an addendum dated June 5, 2003. Dr. F replied that in his opinion there was no tear of the ligament; that the IR for the left index finger was 0%; and that the IR for the right elbow was 0%. However, Dr. F changed his rating of the right upper extremity to 2% which resulted in whole person IR of 1%.

In a report dated June 11, 2003, Dr. B certified that the claimant reached MMI on June 11, 2003, with a 14% IR. Dr. B assigned 9% for the upper extremity impairment for the left side and 15% for the upper extremity impairment for the right side based on sensory loss and motor weakness, for a combined whole person impairment of 14%.

Sections 408.122(c) and 408.125(c) provide that for a claim for workers' compensation benefits based on a compensable injury that occurs on or after June 17, 2001, the report of the designated doctor has presumptive weight, and the Commission

shall base its determination of whether the employee has reached MMI and the IR on that report unless the great weight of the other medical evidence is to the contrary. 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 that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight. We further note that whenever a hearing officer rejects a designated doctor's report, the hearing officer should "clearly detail the evidence relevant to his or her consideration." Texas Workers' Compensation Commission Appeal No. 030091-s, decided March 5, 2003.

In the instant case, the hearing officer determined that the great weight of the other medical evidence was contrary to the finding of Dr. F that the claimant reached MMI on October 4, 2002, and that the claimant had a 1% IR. The hearing officer noted that Dr. F's opinion in his June 5, 2003, addendum that there was no ligament tear was in error. The medical reports of Dr. B and Dr. W, as well as a right wrist arthrogram dated October 22, 2002, suggest that the claimant may have a right wrist ligament tear. The post-operative report of Dr. O dated December 2, 2002, confirmed that the claimant did in fact have a right wrist ligament tear. Because the hearing officer determines that the designated doctor's certification did not consider the right wrist ligament tear, he did not err in determining that the designated doctor's MMI date and IR are not entitled to presumptive weight or in adopting the June 11, 2003, MMI date and 14% IR certified by the treating doctor..

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge