APPEAL NO. 032465
FILED NOVEMBER 7, 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 August 13, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on October 25, 2002, with a 10% impairment rating (IR) as assessed by the designated doctor whose report was not overcome by the great weight of other medical evidence.

The claimant appeals, contending that he is not at MMI (and therefore the IR is premature) pursuant to the reports of Dr. D (the claimant indicates that Dr. D is the treating doctor but the record indicates that Dr. D is a referral doctor). The file does not have a response from the respondent (carrier)

DECISION

Affirmed.

It is undisputed that the claimant sustained a low back injury on _____. The claimant saw a number of doctor's, had two MRI's, an EMG, a myelogram, and a functional capacity evaluation. There is no evidence of disc herniation but undisputedly the claimant has radiculopathy present. The claimant was seen by Dr. O the designated doctor, on October 25, 2002, and was assessed at MMI on that date with a 10% IR based on Diagnosis-Related Estimate Lumbosacral Category III: Radiculopathy, 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). Dr. D disagreed with the assessment that the claimant was at MMI, suggesting another myelogram with a possibility of surgery. (There is no recommendation for spinal surgery in this case.) Dr. D recognizes that the claimant has "positive Waddell's sign for non organic findings." Dr. D's report was sent to Dr. O for comment. Dr. O responded by letter dated March 13, 2003, agreeing that the claimant has radiculopathy, indicating that the claimant (in Dr. O's opinion) is not a good candidate for surgery, and pointing out that under the Texas Workers' Compensation Commission (Commission) "rules" assessing the claimant at MMI with a "rating for the radiculopathy does not keep the patient from getting treatment." The claimant contests the MMI assessment because it has stopped temporary income benefits.

Section 408.122(c) provides that the report of the designated doctor has presumptive weight, and the Commission shall base its determination of whether the employee has reached MMI on the report unless the great weight of the other medical evidence is to the contrary. The hearing officer found that the designated doctor's certification of MMI and IR is not contrary to the great weight of the other medical evidence. Conflicting evidence was presented on the disputed issues. The hearing

officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

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

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge