APPEAL NO. 032675
FILED NOVEMBER 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 was held on September 11, 2003. The hearing officer determined that, in accordance with the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor, the appellant (claimant) reached maximum medical improvement (MMI) on April 26, 2002, with a 10% impairment rating (IR). The claimant appeals these determinations. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed in part, reversed and remanded in part.

Sections 408.122(c) and 408.125(e) provide that for a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. 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 request for clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. *See also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993. Nothing in our review of the record indicates that the hearing officer's MMI determination is 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). Accordingly, we affirm the determination that the claimant reached MMI on April 26, 2002.

With regard to the IR, the pivotal issue is whether the claimant has loss of motion segment integrity warranting a rating under Diagnosis-Related Estimate (DRE) Category V 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). The AMA Guides provide that loss of motion segment integrity is evaluated with flexion and extension

roentgenograms (x-rays). Texas Workers' Compensation Commission Appeal No. 022509-s, decided November 21, 2002. The Commission-selected designated doctor, Dr. L, assigned the claimant a 10% IR under DRE Category III of the AMA Guides for radiculopathy and opined in a letter of clarification dated August 11, 2003, that the claimant's condition did not warrant a rating under Category V because although lateral flexion and extension x-rays were performed prior to the claimant's three-level fusion, there was no documented "degree of motion segment integrity, as required under 3.3B, figure 62 and 63 of the [AMA Guides]," which provides that loss of motion segment integrity is defined as "abnormal back-and-forth motion "(translation) with "antero-posterior or slipping of one vertebra over another greater than 3.5 mm for cervical vertebra or greater than 5 mm for a vertebra in the thoracic or lumbar spine." However, in a report dated November 15, 2000, and entitled "X-Rays Lumbar Spine 4 Views (Revised)," the claimant's treating doctor, Dr. D, noted the following:

> AP, lateral, flexion and extension views of the lumbar spine reveal 5 lumbar vertebra. On AP view, good alignment to the pedicles.
> Lateral X-ray with flexion and extension films reveal 6 mm of translation at L4-5 disc space plus 3 mm of Retrolysthesis at L5-S1 which reduces in flexion. There is a 30% collapse of the disc space at L3-4, L4-5 and L5-S1. Patient has clear evidence of lumbar spine instability at L4-5 and instability with Retrolysthesis at L5-S1.

In Dr. D's opinion, the claimant reached MMI on December 9, 2002, with a 25% IR under DRE Category V.

Although Dr. L specifically notes that he viewed the November 15, 2000, report, it would appear from the evidence that he may actually have viewed a substantially similar report prepared by Dr. D dated November 17, 2000, and entitled "X-Ray Interpretation 11/15/00," which does not include the translation measurements. It appears that Dr. L did not review the revised lumbar spine x-ray interpretative report. If he did indeed review the report containing the lateral flexion and extension translations measurement, he then failed to explain why this report would not warrant a rating under Category V of the AMA Guides. For these reasons, it is necessary to remand the case to the hearing officer to seek additional clarification from Dr. L. The hearing officer should provide a copy of this decision to Dr. L and make clear that there are two reports interpreting x-rays performed on November 15, 2000, and that the crucial report is the one entitled "X-Rays Lumbar Spine 4 Views (Revised)," Dr. L should then clarify whether or not this report provides the measurements required to warrant a rating under DRE Category V and, if not, provide an explanation as to why it does not.

The hearing officer's IR determination is reversed and remanded for further consideration consistent with this decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's

Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.

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Chris Cowan
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Margaret L. Turner
Appeals Judge