APPEAL NO. 032677
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 16, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 18, 2003, with an impairment rating (IR) of five percent in accordance with the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's report and determining that he reached MMI on March 18, 2003, with a five percent IR. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we will consider the claimant's assertion that the hearing officer erred in excluding Claimant's Exhibit No. 1 and page 1 of Claimant's Exhibit No. 2. The claimant did not exchange those exhibits in accordance with the 15-day deadline established in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). Accordingly, we find no merit in the assertion that the hearing officer erred in excluding the exhibits. However, we further note that it has been stated that reversible error is not ordinarily shown in connection with evidentiary rulings unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this instance, the claimant has not demonstrated that the hearing officer's exclusion of his exhibits was reversible error because the exclusion of those exhibits "was not reasonably calculated to cause and probably did not cause the rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The parties stipulated that the claimant sustained a compensable injury on _____; that Dr. K is the designated doctor selected by the Commission; and that Dr. K certified that the claimant reached MMI on March 18, 2003, with an IR of five percent. The hearing officer did not err in giving presumptive weight to the designated doctor's MMI date and five percent IR. In this instance, the difference between the ratings of Dr. K and the claimant's treating doctor is attributable to the fact that the claimant's treating doctor has opined that the claimant has not yet reached MMI and, in the alternative, contends that the claimant should be assigned a rating under lumbosacral diagnosis-related estimate (DRE) Category III for radiculopathy 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), while Dr. K assigned a rating under lumbosacral DRE Category II. The claimant contends that the report from his treating doctor constitutes the great weight of the other evidence contrary to the designated doctor's

report. We cannot agree that the evidence emphasized by the claimant rises to the level of the great weight of the other medical evidence contrary to the designated doctor's report. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Section 408.125(c), and in determining that the claimant reached MMI on March 18, 2003, with a five percent IR.

The hearing officer's decision and order are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge