

APPEAL NO. 032739
FILED NOVEMBER 26, 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 September 23, 2003. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) impairment rating (IR) is 5% and that the date of maximum medical improvement (MMI) is November 8, 2002. The claimant appealed, arguing that the IR and MMI of the designated doctor, Dr. C, are against the great weight of the other medical evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and that the designated doctor chosen by the Texas Workers' Compensation Commission (Commission) was Dr. C. Dr. C examined the claimant on November 8, 2002, and assigned a date of MMI of November 8, 2002, and a 5% IR, using 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). The claimant argues that the determinations of IR and MMI by his treating doctor, Dr. H, are the correct ones. Dr. H assigned an IR of 16% and certified the claimant at MMI on February 12, 2003. Documentary evidence admitted at the CCH indicates Dr. H's disagreement with Dr. C's assigned IR. Dr. H notes that the discrepancy in their respective opinions is caused by Dr. C's failure to rate the fusion of the claimant's thumb. Dr. C responded to Dr. H's concern in correspondence dated March 25, 2002, after receiving a request for clarification from the Commission. Dr. C responded, "[t]o specifically given [sic] impairment for the fusion would be considered a duplication, so only the lack of motion was considered." Also in evidence was a Report of Medical Evaluation (TWCC-69) and report by Dr. H, along with a January 30, 2003, letter from the physical therapist, who actually did the testing for Dr. H. In that letter, the physical therapist enclosed the raw data and the range of motion worksheet for Dr. H's review and approval. He stated that, "I figured the impairment two ways. The method enclosed or by just including the carpalmeta-carpal impairment for the thumb since it was fused, table 18, pg. 58, both methods are exactly 16% WP." On March 14, 2003, Dr. H wrote a letter to the carrier stating that he disagreed with the 5% IR assessed by Dr. C.

Sections 408.122 and 408.125(c) provide that the report of the designated doctor shall have presumptive weight and the Commission shall base the IR and MMI on that report unless the great weight of the other medical evidence is to the contrary. Whether or not the great weight of the other medical records overcomes the presumption that the designated doctor's certification is correct is a question of fact for the hearing officer to

resolve. In the instant case, the hearing officer found that the presumptive weight afforded the opinion of the Commission-selected designated doctor is not overcome by the great weight of the other medical evidence. Nothing in our review of the record indicates that this determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge