

APPEAL NO. 032783
FILED DECEMBER 10, 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 23, 2003. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 13% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant essentially argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR and asks that we adopt the 28% IR certified by Dr. ES, his treating doctor. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on April 19, 2001; and that Dr. MS is the designated doctor selected by the Commission. The hearing officer did not err in giving presumptive weight to the designated doctor's 13% IR. In this instance, the difference in the ratings assigned by the designated doctor and the treating doctor is attributable to the fact that the designated doctor invalidated the claimant's range of motion (ROM) impairment based on his observation that the claimant exhibited submaximal effort during ROM testing and also did not assign a rating for sensory loss because it was nonanatomical, while the treating doctor assigned a rating for measured loss of ROM and sensory deficits. We have long recognized that a designated doctor can invalidate ROM based upon such observations. Texas Workers' Compensation Commission Appeal No. 970499, decided May 1, 1997; Texas Workers' Compensation Commission Appeal No. 960311, decided March 27, 1996. The designated doctor also could decline to assign a rating for sensory loss based upon his clinical judgment that the claimant's sensory loss did not correlate with his injury. Texas Workers' Compensation Commission Appeal No. 972213, decided December 11, 1997. The claimant contends that the reports from the treating doctor constitute 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, and in determining that the claimant has an IR of 13%.

The hearing officer's decision and order are affirmed.

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge