

APPEAL NO. 032810  
FILED DECEMBER 15, 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 30, 2003. With respect to the issues before him, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in appointing Dr. E as a third designated doctor and that the respondent (claimant) reached maximum medical improvement (MMI) on May 13, 2002, with an impairment rating (IR) of 16% in accordance with Dr. E's certification. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the Commission had not abused its discretion in appointing Dr. E as a designated doctor and asks that we reverse the MMI and IR determinations and render a new determination that the claimant reached MMI on July 1, 2001, with a 14% IR in accordance with the report of Dr. T, the second designated doctor. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the Commission did not abuse its discretion in appointing Dr. E as the third designated doctor in this case<sup>1</sup>. The record reflects that after several attempts at clarification, Dr. T, the second designated doctor, refused to consider and rate the claimant's Intra Discal Electro Thermal Treatment (IDET) at L4-5 and L5-S1 as a surgical procedure for purposes of assigning the claimant's IR under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). We have previously determined that an IDET procedure is a surgical procedure for purposes of an IR assessment under the AMA Guides. Texas Workers' Compensation Commission Appeal No. 012635-s, decided December 13, 2001; Texas Workers' Compensation Commission Appeal No. 020469, decided April 17, 2002; Texas Workers' Compensation Commission Appeal No. 020295, decided March 22, 2002. We decline the carrier's invitation to reconsider those decisions. Under the holdings of those cases, the hearing officer properly determined that the Commission did not abuse its discretion in appointing another designated doctor after Dr. T refused to rate the claimant's IDET procedure as a surgery. We have long recognized that it is appropriate to appoint another designated doctor when, after request for clarification, the existing designated doctor fails or refuses to comply with the AMA Guides in assessing the IR. Texas Workers' Compensation Commission Appeal No. 962457, decided January 15, 1997; Texas Workers' Compensation Commission Appeal No. 951594, decided November 8, 1995. In this instance, as noted above, Dr. T refused to

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<sup>1</sup> The first designated doctor appointed in this case certified that the claimant had not yet reached MMI when he examined the claimant. Apparently, when it came time for the claimant to return to the designated doctor, the first designated doctor was no longer qualified to serve and, thus, a second designated doctor was appointed.

rate the claimant's two-level IDET procedure as a surgery in contravention of established precedent that it should be so rated. Accordingly, the hearing officer did not err in determining that the Commission did not err in appointing Dr. E as a third designated doctor in this case. The success of the carrier's challenge to the MMI date and IR is dependent upon the success of its argument that Dr. E was improperly appointed as a third designated doctor. Given our affirmance of the determination that Dr. E was properly appointed as a designated doctor, we likewise affirm the determination that the claimant reached MMI on May 13, 2002, with a 16% IR in accordance with Dr. E's report.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Margaret L. Turner  
Appeals Judge