APPEAL NO. 033153
FILED JANUARY 8, 2004

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 November 3, 2003. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 14%. The claimant appeals this determination. The respondent (self-insured) urges affirmance of the hearing officer's decision.

DECISION

Reversed and rendered.

The claimant sustained a compensable left knee injury on _____, and the parties stipulated that he reached maximum medical improvement (MMI) statutorily on August 31, 2002. There is no indication that a doctor certified MMI and IR prior to the statutory MMI date. The evidence reflects that the claimant was examined by his treating doctor, Dr. C, on December 10, 2002, at which time Dr. C certified that the claimant reached statutory MMI, but misidentified the date as June 5, 2002, with an IR of 20%. The claimant subsequently had a total left knee replacement in January 2003. The self-insured disputed Dr. C's IR and a designated doctor, Dr. W, was appointed by the Texas Workers' Compensation Commission (Commission) to rate the claimant's injury. Dr. W initially examined the claimant on February 14, 2003, approximately four weeks after the knee replacement, and determined that the claimant had not yet reached MMI, despite the fact that the examination was after the date of statutory MMI. On February 24, 2003, Dr. W wrote a supplemental report indicating that it was "almost impossible" to assign an IR due to the recent surgery; however, he certified that the claimant reached statutory MMI on June 5, 2002, which is not the correct statutory date, with a 39% IR. On February 24, 2003, the Commission sent a letter of clarification to Dr. W asking if he rated the claimant's condition as of August 29, 2002, which is not the correct statutory date, and inquiring as to whether the claimant had preexisting knee conditions at the time of the injury. In a letter dated March 26, 2003, Dr W responded that he did not rate the claimant's condition as of August 29, 2002; rather his rating was assigned based on the claimant's condition on the date of examination. Dr W also clarified that the claimant had preexisting knee conditions and that if the claimant's IR were assigned only for menisectomies, the rating would be different than 39%. In a second letter of clarification, the Commission requested that Dr. W give separate ratings; one for the menisectomies, and one for the menisectomies combined with arthritis. Apparently, it was disputed as to whether the compensable injury included arthritis. Dr. W responded in a letter dated May 5, 2003, that in order to answer the questions, he would need to review additional x-rays and reexamine the claimant. Dr. W reexamined the claimant on June 27, 2003, and certified that the claimant reached clinical MMI on the same date with a 30% IR based on the diagnosis of total knee replacement. On August 21, 2003, the claimant was examined by the carrier RME doctor, Dr. O, who noted in his report that he was informed that the claimant reached

statutory MMI on August 31, 2002. Dr. O assigned a 14% IR based on an assessment of arthritis of the left knee, partial menisectomies of the medial and lateral menisci of the left knee, and total left knee replacement.

Section 408.125(e) provides that for injuries occurring prior to June 17, 2001, where there is a dispute as to IR, 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 accorded 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.

In determining that the great weight of the other medical evidence was contrary to Dr. W's report, the hearing officer noted that Dr. W failed to assess the claimant's condition on the date of MMI and failed to provide alternative ratings reflecting the "various disputed components of the compensable injury." The hearing officer determined that "in the interest of procedural economy" the rating of Dr. O would be adopted rather than the appointment of a second designated doctor, which should be "regarded as something of a last resort." We would point out that Dr. O's IR does not provide alternative ratings for the disputed components of the injury, presumably arthritis, and that an extent-of-injury issue was not litigated by the parties or resolved by the hearing officer prior to adopting Dr. O's IR. With regard to the assertion that Dr. W's IR was not appropriate because he rated the claimant's condition on the date of his examination and not on the date of statutory MMI, we have previously stated that where a designated doctor is not appointed until after statutory MMI, it is appropriate and acceptable to rate the claimant's condition as of the date of examination. *See* Texas Workers Compensation Commission Appeal No. 031943, decided September 11, 2003, and Texas Workers Compensation Commission Appeal No. 032366, decided October 29, 2003. In the present case, given that the claimant had a total left knee replacement after statutory MMI, but before he was examined by Dr. W, it would have been difficult, if not impossible, for Dr. W to assign an IR based on the claimant's condition prior to the knee replacement. For these reasons, the hearing officer erred in failing to give presumptive weight to Dr. W's amended report. Accordingly, the hearing officer's decision is reversed and a new decision rendered that the claimant's IR is 30% in accordance with the opinion of the designated doctor.

The true corporate name of the insurance carrier is **a governmental entity self-insured through DEEP EAST TEXAS INSURANCE FUND** and the name and address of its registered agent for service of process is

EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge