

APPEAL NO. 033194
FILED FEBRUARY 5, 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 10, 2003. The hearing officer decided that the respondent's (claimant herein) impairment rating (IR) was 16% based upon the third certification of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The appellant (carrier herein) argues that the hearing officer erred in giving presumptive weight to the last certification of the designated doctor because this certification was done more than a year after the date of statutory maximum medical improvement (MMI). The carrier argues that the hearing officer should have given presumptive weight to the second certification of the designated doctor in which he assessed a 7% IR. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that the claimant sustained a compensable injury on _____, and reached MMI on January 27, 2002. The parties also stipulated that Dr. S, the designated doctor selected by the Commission, found that on September 27, 2000, the claimant had a 4% IR; that on January 23, 2002, Dr. S found the claimant to have a 7% IR; and that on April 10, 2003, Dr. S found the claimant to have a 16% IR.

The carrier argues that the Commission should not have sought clarification from the designated doctor after the date of statutory MMI and that the hearing officer should not have given presumptive weight to an IR which was assessed after the date of statutory MMI. The carrier contends that to do so is contrary to Commission Advisory 2003-10, which was issued on July 22, 2003. The claimant responds that the clarification was appropriate as she had additional surgery and problems with additional body parts after the earlier designated doctor certifications.

We recently addressed the issue of the effect of Advisory 2003-10 in Texas Workers' Compensation Commission Appeal No. 033128-s, decided January 28, 2004. In that case the majority reversed the decision of a hearing officer who applied Advisory 2003-10 in the same way the carrier is arguing it should be applied here, and rendered a decision giving presumptive weight to the last amended report of the designated doctor, relying upon Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(ii)). In the present case the hearing officer properly applied Rule 130.6(i) in giving presumptive weight to the last certification of the designated doctor. As explained in Appeal No. 033128-s, Advisory 2003-10 does not dictate a contrary result.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

CONCURRING OPINION:

I concur in the affirmance of the hearing officer's decision that the claimant's IR is 16% as reported by the designated doctor in his third Report of Medical Evaluation (TWCC-69). The carrier's contention that the claimant has a 7% IR as reported by the designated doctor in his second TWCC-69 is flawed for two reasons. First, the 7% IR is based on the designated doctor's examination of January 23, 2002, which was before the claimant reached MMI on January 27, 2002, as was stipulated by the parties. Second, the 7% IR assigned by the designated doctor on January 23, 2002, failed to consider all of the claimant's injured body parts, as it only assigned impairment for the left shoulder. The designated doctor's third TWCC-69 of April 10, 2003, assigned impairment for not only the left shoulder, but also for the left elbow and the right upper extremity. The designated doctor did examine the claimant on April 10, 2003, which was after the claimant reached MMI on January 27, 2002. The designated doctor's first two TWCC-69's were based on examinations that were performed before the claimant reached MMI. See Section 401.011(23).

Robert W. Potts
Appeals Judge