APPEAL NO. 033299
FILED JANUARY 28, 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 December 2, 2003. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) properly appointed Dr. T as the designated doctor in September 2001 under the applicable provisions of the 1989 Act and the Commission rules effective at that time, and that the appellant's (claimant) correct impairment rating (IR) is 8%, as assessed by Dr. T. The claimant appeals, contending that Dr. T was improperly appointed as the designated doctor and, consequently, the 8% IR assigned by him cannot be adopted. The respondent (carrier) urges affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b)(4) (Rule 130.6(b)(4)), in effect at the time Dr. T was appointed, provided that in order to serve as a designated doctor for a dispute, a doctor shall, to the extent possible, be in the same discipline and licensed by the same board of examiners as the employee's doctor of choice. The claimant contends that Dr. T, a plastic surgeon, was not qualified to serve as the designated doctor because he is not of the same discipline as the claimant's treating doctor, Dr. M, an orthopedic surgeon, and, more specifically, because Dr. T "does not perform reconstruction of the anterior cruciate ligament." We have previously considered and rejected the argument that to be considered "of the same discipline," doctors must practice the same medical specialties. Texas Workers' Compensation Commission Appeal No. 962188, decided December 23, 1996, and Texas Workers' Compensation Commission Appeal No. 982004, decided September 30, 1998. Accordingly, we perceive no error in the hearing officer's determination that Dr. T was properly appointed by the Commission to serve as the designated doctor. The claimant's reliance on Texas Workers' Compensation Commission Appeal No. 030737, decided May 14, 2003 is misplaced, as that case specifically deals with the amended provisions of Section 408.0041(b) and Rule 130.5(d)(2)(C), which were not in effect at the time Dr. T was appointed.

Section 408.125(e) provides that for injuries that occurred prior to June 17, 2001, the report of the designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. 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. Nothing in our review of the record indicates that the hearing officer's IR 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).

The decision and order of the hearing officer 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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Chris Cowan
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Edward Vilano
Appeals Judge