

APPEAL NO. 033320  
FILED FEBRUARY 17, 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 8, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on June 11, 2001, with a 19% whole body impairment rating (IR). The appellant (carrier) appealed, arguing that the evidence and law fail to support the Decision and Order of the hearing officer. The carrier argues that the initial certification of the designated doctor should be given presumptive weight because spinal surgery was not under active consideration at the time of statutory MMI. The carrier additionally argues that the amended IR of the designated doctor cannot be said to constitute the claimant's IR at the time of MMI. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable injury on \_\_\_\_\_. The Texas Workers' Compensation Commission (Commission) selected a designated doctor who examined the claimant on August 24, 1999, and certified MMI to be July 13, 1999, with a 6% IR. The evidence reflects that the claimant underwent spinal surgery on May 24, 2002. Subsequently, a letter of clarification was sent to the designated doctor. Upon learning that the claimant had surgery, the designated doctor requested to reevaluate her. The designated doctor reexamined the claimant on April 8, 2003, and certified that the claimant reached MMI on June 11, 2001, which was the date of statutory MMI with an IR of 19%. The parties stipulated that, "if claimant reached statutory MMI, she would have reached it on June 11, 2001."

In the past, we have held that it is inappropriate for a designated doctor to amend a certification after statutory MMI, if surgery was not under active consideration at the time of statutory MMI. Texas Workers' Compensation Commission Appeal No. 002929-s, decided January 23, 2001; Texas Workers' Compensation Commission Appeal No. 992951, decided February 14, 2000; Texas Workers' Compensation Commission Appeal No. 991081, decided July 8, 1999; and Texas Workers' Compensation Commission Appeal No. 990833, decided June 7, 1999. However, in Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association cases decided after the adoption of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), which became effective January 2, 2002, the Appeals Panel has held that the fact that the spinal surgeries occurred after statutory MMI does not automatically mean that they cannot ever be considered in determining the IR. We do not hold that spinal surgeries after statutory MMI must always be considered in all cases. In the instant case, the hearing officer found that the surgeon recommended spinal surgery for the claimant on May 16,

2000, and spinal surgery was under "active consideration." Sufficient evidence is in the record to support that finding.

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that the report of a designated doctor determining the date of MMI and the claimant's IR shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. We have held that the designated doctor's report should not be rejected absent a substantial basis for doing so. Texas Workers' Compensation Commission Appeal No. 960897, decided June 28, 1996. 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.

Whether the great weight of the other medical evidence was contrary to the amended opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this case, we are satisfied that the hearing officer's MMI and IR determinations are sufficiently supported by the evidence. Accordingly, we cannot agree that the hearing officer erred in determining that the claimant reached MMI on June 11, 2001, with a 19% IR.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge