APPEAL NO. 033351
FILED FEBRUARY 9, 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 19, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on September 20, 2002, with a 12% impairment rating (IR) as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant appeals, asserting that she reached MMI on September 24, 2002, with a 24% IR as certified by her treating doctor. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

We first address the claimant's assertion that she reached MMI on September 24, 2002. While the evidence shows that the claimant was examined by her treating doctor on that date, the treating doctor's report actually certifies the claimant at MMI on September 20, 2002. Additionally, the parties stipulated, at the hearing below, that the claimant reached MMI on September 20, 2002. Section 410.166 provides that an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Accordingly, the hearing officer properly concluded that the claimant reached MMI on September 20, 2002.

The hearing officer did not err in determining that the claimant's IR is 12% as certified by the Commission-appointed designated doctor. Under Section 408.125(e), the Commission-appointed designated doctor's report is entitled to presumptive weight, and the Commission shall base its IR determination on that report unless the great weight of the other medical evidence is to the contrary. The claimant asserts that the designated doctor's report is contrary to the great weight of the other medical evidence because it does not provide a rating for loss of range of motion in the lumbar spine. The claimant requests adoption of her treating doctor's report, which she believes better evaluates her condition. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. The report of the claimant's treating doctor represents a difference in medical opinion, which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. Additionally, we note that the treating doctor used the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000), rather than the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. *See* Rule 130.1(c)(2)(B)(ii). In view of the evidence presented, we cannot conclude 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 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

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Edward Vilano
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Michael B. McShane
Appeals Panel
Manager/Judge