APPEAL NO. 040355
FILED APRIL 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 August 20, 2003, and January 26, 2004. The hearing officer determined that the respondent's (claimant) impairment rating (IR) cannot be determined. The appellant (carrier) appeals, asserting that the designated doctor's final amended report is entitled to presumptive weight and should be adopted. The claimant did not file a response.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant was diagnosed with torn medial and lateral menisci and underwent medial and lateral meniscectomies. The claimant was subsequently examined by a designated doctor appointed by the Texas Workers' Compensation Commission (Commission) for purposes of maximum medical improvement (MMI) and IR. The parties stipulated that the claimant reached MMI on May 2, 2002, as certified by the designated doctor. The designated doctor certified the claimant with an 11% IR, under 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). This rating was comprised of 7% under Table 64 for right knee meniscectomies and 4% under Table 41 for right knee flexion of 110 degrees and flexion contracture of 9 degrees. The claimant was returned to the designated doctor for reexamination based on a peer review doctor's report, which indicated that the claimant had undergone further surgery on May 8, 2002. However, the claimant testified that he had not received further treatment since May 2, 2002, and the medical evidence supports this. Following reexamination, the designated doctor certified a 15% IR, comprised of 3% under Table 64 for right knee meniscectomies, 4% under Table 41 for right knee flexion of 110 degrees, and 8% under Table 41 for right knee flexion contracture of 15 degrees.

The carrier's peer review doctor opined that the claimant was entitled to a 12% IR, consisting of 4% under Table 64 for meniscectomies and 8% under Table 41 for flexion contracture of 15 degrees. The peer review doctor opined that the claimant was not entitled to a rating of 4% under Table 41 because the claimant's right knee flexion was not *less than* 110 degrees. The peer review doctor further opined that the claimant could not receive both a 4% rating under Table 41 for loss of flexion and an 8% rating under the same table for flexion contracture.

In response to a request for clarification, the designated doctor agreed that the claimant was entitled to a rating of 4% under Table 64 for right knee meniscectomies. The designated doctor misunderstood the peer review doctor's opinion with regard to a

rating under Table 41 and maintained his combined rating for right knee flexion and flexion contracture. Following the initial hearing in this matter, the hearing officer clarified the peer review doctor's opinion and requested a response from the designated doctor. The designated doctor amended his report and certified the claimant with an 8% IR under Table 41 for right knee flexion contracture. The designated doctor declined to give a rating for right knee meniscectomies.

The hearing officer erred in deciding that the claimant's IR cannot be determined. Section 408.125(e) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(a)(2) (Rule 130.6(a)(2)) provide that the report of the designated doctor shall have presumptive weight and that the Commission shall base its determinations on such report unless it is contrary to the great weight of the other medical evidence. Pursuant to Rule 130.6(i), a designated doctor's response to a Commission request for clarification is also considered to have presumptive weight as it is part of the designated doctor's opinion. In this case, although the designated doctor provided several different IRs in response to requests for clarification, his last report is entitled to presumptive weight and should be adopted unless the great weight of the other medical evidence is to the contrary. In view of the evidence, we reverse the hearing officer's decision and render a new decision that the claimant has an 8% IR, as certified in the designated doctor's final amended report.

The decision and order of the hearing officer is reversed and a new decision rendered that the claimant has an 8% IR.

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

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

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Panel
Manager/Judge

_____
Margaret L. Turner
Appeals Judge