

APPEAL NO. 040374
FILED MARCH 30, 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 January 28, 2004. The hearing officer determined that the appellant's (claimant) impairment rating (IR) was 10% as assessed by the designated doctor whose opinion was not overcome by the great weight of other medical evidence.

The claimant appeals, contending that the designated doctor did not actually examine him (did not touch him), and that additional subsequent diagnostic testing and two other doctor's reports do show significant changes and radicular symptoms. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury to the "cervical spine and right carpal tunnel syndrome [and] the injury does not include a cervical fracture, an injury to the lumbar spine or a closed head injury." The parties also stipulated that Dr. J was the Texas Workers' Compensation Commission (Commission)-selected designated doctor and that maximum medical improvement (MMI) was October 24, 2002 (the statutory MMI date per Section 401.011(30)(B)). It is undisputed that the claimant has not had any surgery for his compensable injury and has refused surgery for the compensable injury. It is also undisputed that 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) was the appropriate edition to be used.

Another designated doctor in a report dated July 29, 2002, indicated that the claimant was not at MMI (needed a different type of therapy) and if an IR were done "it would be somewhere between 0-5%." The treating doctor in a letter dated November 26, 2002, disagreed with the projected 0-5% IR, and said that the IR should be 13% but failed to state how that was calculated. Although the first designated doctor stated that he would be happy to see the claimant again at the time of statutory MMI to do an IR, for reasons unclear (claimant apparently missed an appointment), Dr. J was appointed as the second designated doctor. In a Report of Medical Evaluation (TWCC-69) and four page narrative plus range of motion testing results dated January 10, 2003, Dr. J certified MMI and assessed a 10% IR based on a 5% impairment Diagnosis-Related Estimate (DRE) Cervicothoracic Category II: Minor Impairment (DRE II) plus 5% impairment for the right wrist and right shoulder using the combined values chart to arrive at the 10% IR.

Dr. C, the claimant's treating doctor, ordered additional MRI's and in a letter dated May 9, 2003, stated that the 10% IR "is grossly under estimated and that [claimant's] [IR] should be a lot higher." At the claimant's request this letter was sent to Dr. J who, in a letter dated May 30, 2003, responded, addressed Dr. C's letter, and the MRI's, and concluded that "I remain with my assessment and its rating." Dr. C referred the claimant to Dr. B for an IR and in a report dated August 22, 2003, Dr. B was of the opinion that the claimant fits into DRE III with a 15% IR and there are "no signs to qualify for any higher rating."

The claimant testified that he believed he was entitled to at least a 15% IR. The determination of an injured employee's IR under the 1989 Act must be based on medical evidence, not on testimony. Texas Workers' Compensation Commission Appeal No. 002394, decided November 27, 2000. Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of other medical evidence is to the contrary. The Appeals Panel has frequently noted the important and unique position occupied by the designated doctor under the 1989 Act. See *e.g.*, Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992. We have just as frequently stated that a "great weight" determination amounts to more than a mere balancing or preponderance of the medical evidence and that a designated doctor's report should not be rejected absent a substantial basis to do so. Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order.

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

**MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge