APPEAL NO. 040981
FILED JUNE 15, 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 February 11, 2004. The hearing officer determined that the appellant's (claimant) _____, compensable injury includes an injury to her low back, and that she reached maximum medical improvement (MMI) on November 12, 2002, with a 5% impairment rating (IR) pursuant to the Texas Workers' Compensation Commission (Commission)-appointed designated doctor's certification. The claimant appealed, asserting that she is not yet at MMI and that the 5% IR is against the great weight of the other medical evidence. The respondent (carrier) responded, urging affirmance. The hearing officer's extent-of-injury determination has not been appealed and has become final. Section 410.169.

DECISION

Reversed and remanded.

The hearing officer's Statement of the Evidence gives a detailed rendition of the facts and evidence submitted in this matter, and they will not be repeated here. Important to this decision is the following: that on June 29, 2002, the claimant underwent a lumbar MRI which revealed a right posterolateral disc protrusion at L5-S1 directly contacting the right nerve roots at L5-S1 and in the lateral recess of S1; that on August 30, 2002, the claimant underwent a lumbar EMG/nerve conduction study which revealed positive findings "in left L5 innervated muscles"; that on November 12, 2002, the claimant was evaluated by the designated doctor and was found to be at MMI as of that date with a 5% IR; and that on November 26, 2002, the claimant attended a Commission-appointed required medical examination (RME) regarding the extent-of-injury issue. In the RME report, the doctor references the MRI and EMG results, and indicated that he could not correlate the MRI findings with the positive left sided EMG results. The claimant submitted medical documentation which tends to dispute the designated doctor's certification of MMI and IR.

The MMI/IR report of the designated doctor chosen by the Commission has presumptive weight and the Commission shall base its determination of MMI/IR on the designated doctor's report unless the great weight of the medical evidence is to the contrary. Sections 408.122(c) and 408.125(c). In this case, the hearing officer found that the great weight of the other medical evidence is not sufficient to contradict the designated doctor's certification dated November 12, 2002. Ordinarily, the mere existence of medical reports which tend to contradict the certification of MMI and IR issued by a designated doctor is insufficient to overcome that certification. In the instant case, the designated doctor certified that the claimant had a 5% IR based upon Diagnosis-Related Estimate Lumbosacral Category II of 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). In discussing the claimant's lumbar IR, the designated doctor stated that the "medical records available do not include the MRI, nor the nerve conduction studies, and they are lacking notes from both [(Dr. Sa)] and [(Dr. St)], who cared for the [claimant] with her above complaints." The designated doctor further stated that the results of the nerve conduction studies were unknown. There is no indication that the results of these diagnostic studies, or the missing medical reports, were ever forwarded to the designated doctor for her consideration.

A hearing officer has the duty to fully develop the record. Section 410.163, Texas Workers' Compensation Commission Appeal No. 022807, decided December 18, 2002. While we agree that the parties have an affirmative obligation to ensure that steps are taken to make sure that the designated doctor receives all of the relevant medical records in a case, this does not abrogate the duty of the hearing officer under the 1989 Act. This is especially so when the designated doctor's report states on its face that all pertinent records were not reviewed. Because we find that the designated doctor did not have all of the claimant's pertinent medical records at the time the MMI and IR certification was issued, we remand this matter back to the hearing officer. On remand, the designated doctor is to be sent the medical records and test results which she stated were not available to her in her initial report. After review of these records, the designated doctor may reexamine the claimant if she deems a reexamination necessary. If the designated doctor chooses to not change her certification, she shall issue a letter explaining her reasons as to why her opinion remains unchanged. If the designated doctor chooses to alter her certification of MMI and IR, the designated doctor should be reminded that the IR must be based upon the claimant's condition on the date of MMI. The parties shall be given a copy of the designated doctor's ultimate conclusion, and be afforded an opportunity to respond to it with a medical report of their own.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS 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.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Margaret L. Turner
Appeals Judge