

APPEAL NO. 040994
FILED JUNE 14, 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 March 24, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on May 28, 2002, and that his impairment rating (IR) is 10% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in her initial report. In his appeal, the claimant argues that the hearing officer erred in not giving presumptive weight to the designated doctor's 19% IR that she certified in an amended report. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in giving presumptive weight to the designated doctor's initial report and adopting the 10% IR. In an unappealed finding, the hearing officer determined that the claimant reached statutory MMI on May 28, 2002. On January 29, 2003, the claimant underwent spinal surgery. The Commission sought clarification from the designated doctor of whether the claimant's surgery changed his IR and the designated doctor amended her certification and assessed a 19% IR. However, as the hearing officer noted, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)), which became effective March 14, 2004, provides that "[a]ssignment of an [IR] for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination." Thus, we cannot agree that the hearing officer erred in not adopting the 19% IR because it clearly was based upon a change in the claimant's condition due to the surgery after statutory MMI. The claimant argues that pursuant to Rule 130.6(i), the hearing officer should have adopted the 19% IR because that Rule provides that a designated doctor's response to a request for clarification "is considered to have presumptive weight as it is part of the doctor's opinion." Despite the seeming inconsistency between Rule 130.1(c)(3) and Rule 130.6(i), it appears that in adopting Rule 130.1(c)(3), the Commission intended to limit the circumstances where amendments to the IR will be given presumptive weight to those changes in the claimant's condition that occur prior to the date of MMI. Thus, where, as here, the changes in the claimant's condition and the IR occur after MMI, they simply will not be considered. Based upon that interpretation, the hearing officer did not err in giving presumptive weight to the designated doctor's initial report and the 10% IR.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge