APPEAL NO. 041178
FILED JULY 5, 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 (CCH) was held on April 13, 2004. The hearing officer determined that the appellant (claimant) had a 0% impairment rating (IR) as assessed by the designated doctor whose report was not contrary to the great weight of other medical evidence.

The claimant appealed, contending that he has not reached maximum medical improvement (MMI), that he should "be relieved of the effects of [his] stipulation" because he was not represented at the CCH, and for the first time alleges that since the designated doctor invalidated range of motion (ROM), he "is required to consider other methods for providing an [IR]." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (bilateral wrists and shoulder) injury on _____, and that the claimant reached MMI on April 23, 2003. The designated doctor certified MMI on the stipulated date of MMI (and the treating doctor certified an April 15, 2003, MMI date). At the CCH the parties were asked if the stipulations were correct and the parties agreed they were. The claimant elected to proceed with the assistance of an ombudsman. We find no provision for negating a stipulation on the basis that the claimant was not represented by an attorney.

The claimant was initially examined by Dr. M, the designated doctor, on January 29, 2003. In a report of that date, Dr. M stated that the claimant had "significant loss of motion in the bilateral wrists and right shoulder and that the claimant had not reached MMI using 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). Although no IR was assessed the ROM studies would have suggested a 23% IR. A functional capacity evaluation performed January 17, 2003, showed inconsistent effort and voluntary termination of testing by the claimant.

The claimant's treating doctor, in a report dated April 15, 2003, certified MMI and assessed a 17% IR based on various loss of ROM of the right and left upper extremities (UE). The claimant was subsequently reexamined by the designated doctor on April 23, 2003. Dr. M certified the claimant at MMI and assigned a 0% IR referring to "attached sheets." Attached was an "[IR] report" stating that the claimant's ROM "for all is deemed invalid due to submaximal effort/inconsistent findings from previous ROM testing on 01-29-2003."

The Texas Workers' Compensation Commission (Commission) by letter dated June 26, 2003, requested clarification regarding the invalid ROM and that it did not appear ROM was measured or calculated on the January 29, 2003, exam. Dr. M responded submitting "a copy of the [ROM] dated 01-29-2003, which shows the submaximal effort/inconsistencies from my [ROM] taken on 04-23-2003." Subsequently by a report dated November 17, 2003, another chiropractor assessed a 7% IR based on loss of ROM for the right and left UE.

The hearing officer acknowledged the reports from the other two doctors contrary to the designated doctor's report, but found those reports did not overcome the presumptive status accorded the designated doctor's report. Section 408.125(c) provides that for a claim for workers' compensation benefits based on a compensable injury that occurs on or after June 17, 2001, 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, and that if the great weight of medical evidence contradicts the IR contained in a report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to the Commission request for clarification is considered to have presumptive weight as it is part of the doctor's opinion. The hearing officer found that the 0% IR assigned by the designated doctor is not contrary by the great weight of other medical evidence, and concluded that the claimant's IR is 0%. Whether an injured employee has loss of ROM or if there are other ways to assess an IR are matters of medical judgment to be exercised by the designated doctor.

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 **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

BARRY E. CROMBAR, II
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Veronica L. Ruberto
Appeals Judge

_____
Edward Vilano
Appeals Judge