APPEAL NO. 041665
FILED AUGUST 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 June 22, 2004. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 12% as assessed by the designated doctor whose report was not contrary to the great weight of other medical evidence.

The claimant appeals, contending that he should have been given an impairment under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides third edition) and that his IR should be 20% as assessed by the treating doctor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury (to his left shoulder and neck) on _____, and that the claimant reached maximum medical improvement (MMI) on November 11, 2001. It is undisputed that the claimant has had two left shoulder surgeries and that the AMA Guides third edition should be used because a carrier-required medical examination (RME) doctor first assessed an IR (not in evidence) on August 22, 2001, using that edition. Dr. H the designated doctor initially assessed a 14% IR based on 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) (AMA Guides fourth edition). (The treating doctor contends that the 14% IR should be added to a 6% impairment from Table 49 Section (II)(C) of the AMA Guides third edition to arrive at 20% IR.) The designated doctor was advised to use the AMA Guides third edition and after a reexamination on January 27, 2003, assessed a 12% IR based on 8% impairment for cervical loss of range of motion (ROM) and 7% impairment of the left upper extremity (LUE) or 4% whole body impairment for LUE loss of ROM. Letters requesting clarification were sent to the designated doctor asking if an impairment from Table 49 (AMA guides third edition) would be appropriate. In a letter dated July 30, 2003, Dr. H replied that based on his examination, the complaints, history and studies he believed it was not appropriate to use Table 49. Cervical MRIs reveal no disc herniations and at least one report dated July 31, 2001, reviews the claimant's MRI to be "completely normal appearing cervical spine other than degenerative changes C5 and C6." Another carrier RME report dated August 22, 2001, assessed an 11% IR based on 4% impairment from Table 49 Section (II)(B) and 7% impairment for LUE loss of ROM.

At issue was whether the claimant should have a rating from Table 49 for a cervical impairment. This is a case where there is a difference of medical opinion regarding the rating of the cervical injury.

Section 408.125(e) provides that if the designated doctor is chosen by the Texas Workers' Compensation Commission (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 the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. We have previously discussed the meaning of the "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992.

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 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Robert W. Potts
Appeals Judge