

APPEAL NO. 050114
FILED MARCH 8, 2005

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 December 28, 2004. In Texas Workers' Compensation Commission Appeal No. 042634 decided November 29, 2004, the Appeals Panel remanded the case for the hearing officer to allow the appellant (claimant) an opportunity to present evidence on: whether she had good cause for not attending the CCH on August 26, 2004; whether she reached maximum medical improvement (MMI), and if so, what was her impairment rating (IR); and as a separate issue, the hearing officer should determine whether the claimant had good cause for not attending the CCH on August 26, 2004.

On remand, the hearing officer determined that the claimant had good cause for not attending the August 26, 2004, CCH, and that the claimant reached MMI on August 6, 2003, with a 10% IR as assessed by the designated doctor. The claimant appealed, contending that the designated doctor did not adequately examine her and that her MMI date should be November 3, 2003, with a 40% IR as assessed by her treating doctor. The file does not contain a response from the respondent (carrier). The hearing officer's good cause determination for failure to attend the CCH on August 26, 2004, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and that the Texas Workers' Compensation Commission (Commission)-appointed designated doctor was (Dr. T). The evidence reflects that the claimant's treating doctor, (Dr. K), examined the claimant on August 6, 2003, and certified that the claimant reached statutory MMI on that same date with a 40% IR, 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 (AMA Guides). Dr. K assessed a 40% IR, based on 18% impairment for the cervical spine (15% impairment for loss of range of motion (ROM) combined with 4% impairment under Table 75 Section (II)(B)) and 27% impairment for the lumbar spine (23% impairment for loss of ROM combined with 2% under Table 75 Section (II)(B)), for a combined impairment value of 40%. The evidence does not reflect why Dr. K utilized the ROM model as opposed to the Diagnosis-Related Estimate (DRE) model in assessing the claimant's IR. In Texas Workers' Compensation Commission Appeal No. 030288-s, decided March 18, 2003, the Appeals Panel held that although there are instances when the ROM model may be used, "the use of the DRE Model is not optional and is to be used unless there is a specific explanation why it cannot be used." In a subsequent undated letter, Dr. K states that he mistakenly marked statutory rather than clinical for the MMI date of August 6, 2003, and that "[i]f

the [claimant] were allowed psychological treatment as recommended by (Dr. R), her MMI date would be the statutory date of 11-3-03.” Additionally, Dr. K states that he has no changes to make to his original IR other than the MMI date. Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the “[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.”

The designated doctor, Dr. T, examined the claimant on October 15, 2003, and he certified that the claimant reached statutory MMI on August 6, 2003, with a 10% IR. The August 6, 2003, MMI date was the date of MMI certified by the treating doctor, Dr. K, who later explained that was the “clinical” date. Dr. T assessed a 10% IR, based on 0% for the cervical spine from DRE Cervicothoracic Category I; 0% for the thoracic spine from DRE Thoracolumbar Category I; and 10% for the lumbar spine from DRE Lumbosacral Category III: Radiculopathy, using the AMA Guides. A letter of clarification was sent to the designated doctor asking him to review Dr. K’s IR assessment and whether the documentation would change his opinion. Dr. T responded that he would not change his original IR assessment.

Sections 408.122(c) and 408.125(c) provide that the report of the designated doctor has presumptive weight, and the Commission shall base its determinations of MMI and IR on the designated doctor’s report unless the great weight of the other medical evidence is to the contrary. Rule 130.6(i) provides that the designated doctor’s response to a Commission request for clarification is considered to have presumptive weight as it is part of the doctor’s opinion. We conclude that the hearing officer’s MMI and IR determinations as reported by the designated doctor are supported by sufficient evidence and are not against the great weight and preponderance of the evidence.

We affirm the hearing officer's decision and order.

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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge