APPEAL NO. 061669
FILED OCTOBER 4, 2006

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 July 24, 2006. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on February 8, 2005 (as stipulated) with an impairment rating (IR) of 8%, (per the designated doctor, Dr. A); and (2) that because the only basis for the claimant's request for a second designated doctor is that he was not happy with the findings of the first designated doctor, the claimant was not entitled to the appointment of a second designated doctor. The claimant appealed the hearing officer's IR and appointment of a second designated doctor determinations. The claimant asserted that Dr. A assessed a 13% IR, not an 8% IR as found by the hearing officer. The claimant requests that the Appeals Panel correct the IR as found by the hearing officer and to adopt Dr. D amended certification that the claimant reached MMI on March 8, 2005, with a 30% IR. The respondent (carrier) responded, stating that it agreed that the correct IR is 13% as assessed by Dr. A, however, the carrier argued that the record supports an 8% IR as previously assessed by Dr. D. The carrier contends that the evidence supports the hearing officer's determination that the claimant is not entitled to the appointment of a second designated doctor.

DECISION

Reversed and rendered in part, affirmed in part.

BACKGROUND INFORMATION

The parties stipulated that the claimant sustained a compensable injury on _____, that the claimant reached MMI on the statutory date of February 8, 2005, and that Dr. A was appointed as the designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division). The designated doctor, Dr. A, examined the claimant on May 10, 2005, and certified that the claimant reached statutory MMI on February 8, 2005, with a 13% IR. In response to a letter dated May 25, 2006, Dr. A stated that he stood by his previous IR of 13%. A referral doctor, Dr. D, examined the claimant on March 8, 2005, and certified that the claimant reached MMI on March 8, 2005, with an 8% IR based on the left knee injury only. The evidence indicates that Dr. D failed to rate the entire compensable injury, and that he subsequently amended the claimant's IR to 30% to reflect a rating for the entire compensable injury.

APPOINTMENT OF A SECOND DESIGNATED DOCTOR

The hearing officer's determination that the claimant is not entitled to the appointment of a second designated doctor is supported by sufficient evidence and is

not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

IR

For CCH's which are held on or after September 1, 2005, Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a Division request for clarification is considered to have presumptive weight as it is part of the doctor's opinion.

The hearing officer's Finding of Fact No. 4 states that the designated doctor, "[Dr. A] found Claimant to be at [MMI] on February 8, 2005, with an [IR] of 8% percent" and Finding of Fact No. 5 states that, "[Dr. A's] assigned [IR] is supported by a preponderance of the evidence." The claimant asserts that the hearing officer incorrectly found that the claimant's IR was 8%, rather than 13% as assessed by Dr. A. A review of the record indicates the only 8% IR in evidence was assessed by Dr. D; however, as previously noted the 8% IR did not rate the entire compensable injury. The evidence is sufficient to support the hearing officer's finding that Dr. A's assigned IR is supported by a preponderance of the evidence. However, the record indicates that Dr. A's IR was 13%, and not 8% as found by the hearing officer. There are no other records in evidence to show that Dr. A assessed another IR.

Accordingly, we reverse the hearing officer's IR determination that the claimant's IR is 8%, and render a new decision that the claimant's IR is 13% as assessed by the designated doctor, Dr. A. The hearing officer's determination that the claimant is not entitled to the appointment of a second designated doctor is affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.

_____
Veronica L. Ruberto
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge