

## APPEAL NO. 950166

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (city), Texas, on December 28, 1994, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) reached maximum medical improvement (MMI) on July 1, 1994, with a zero percent impairment rating (IR) in accordance with the certification of the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appeals urging that the designated doctor was biased against the claimant, his report was flawed by incompetence, and that the carrier selected and paid doctors rendered unfavorable reports. He further urges that the designated doctor refused to follow the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and asks that it be set aside. The respondent (carrier) asserts that claimant has not shown that the opinion of the designated doctor is against the great weight of medical evidence and urges that the decision be affirmed.

### DECISION

The decision is affirmed.

The hearing officer's Decision and Order sets out the pertinent evidence adequately and fairly and is adopted for purposes of this request for review. Succinctly, the claimant sustained a compensable back injury in (month year). He was under treatment from several doctor's over the course of the next year and several months. The claimant's testimony and medical reports in evidence show that conservative treatment and therapy were apparently not successful. However, there is also evidence that the claimant may not have carried through with treatment at one time and that a couple of doctors believed there was symptom magnification involved on the part of the claimant. There was a recommendation from one doctor for spinal surgery; however, a second opinion doctor did not concur in a report dated September 30, 1994, which contained the comment "[p]atient has multiple evidences of nonorganic findings as well as symptom magnification." There was no evidence that any resolution of the different opinions regarding surgery had been or was being sought through the Commission at the time of the hearing. A carrier selected doctor certified that maximum medical improvement (MMI) occurred on May 5, 1994, with a zero percent IR. A Commission-selected designated doctor examined the claimant and his records (at the time) and rendered a report dated August 16, 1994, certifying MMI as July 1, 1994, and an IR of zero percent. Several additional diagnostic tests were performed and a request was made for the designated doctor to review them and determine their impact on his first report. He did so and in a letter dated September 22, 1994, stated that he opined that a mild disc bulge was present, a possible finding "in up to 40% asymptomatic individuals" and that he did not believe it responsible for the claimant's symptoms. He pointed out one of the reports he reviewed indicated that the claimant was less than cooperative with the examination and that there was a normal neurologic examination. In stating that his review of the new tests "did not, in any way, change" his

opinion as expressed in his earlier report, the designated doctor stated "[a]lthough I do believe there is some evidence of annular disruption of the L5-S1 disc, I believe that this is not consistent with the examinee's mechanism of injury" and that "his symptomatology pattern is out of proportion with his injury."

The claimant's treating doctor disagreed with the report of the designated doctor and states that the designated doctor did not "accurately characterize the objective diagnostic tests" and that he did not properly comment on a discogram. He also faulted the designated doctor's assessment of claimant's pain as purely subjective and questioned his attribution of the annular tear as not trauma from the claimant's fall. The treating doctor noting that none of the conservative treatments were effective, stated that the claimant has now consented to surgery if it can be authorized.

It is clear that there was much conflict in the medical evidence. However, that is the basic reason that the 1989 Act established the designated doctor and provided that his report would carry presumptive weight where selected by the Commission. Sections 408.123 and 408.125. A difference in medical opinion is not uncommon and from our review of the record that is what is essentially involved here. We have stated previously that a difference in medical opinion is not a sufficient basis to discard a designated doctor's report. Texas Workers' Compensation Commission Appeal No. 941675, decided January 27, 1995; Texas Workers' Compensation Commission Appeal No. 94839, decided August 11, 1994. And, whether the great weight of other medical evidence is contrary to the designated doctor's report is normally a question of fact for the hearing officer (Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993) based upon medical evidence and not lay testimony. Texas Workers' Compensation Commission Appeal No. 93442, decided July 9, 1993. The report upon which the designated doctor rendered his certification of MMI and IR clearly states that only the correct version of the AMA Guides can be used in assessing MMI and IR. The designated doctor's detailed report and addendum sets forth his opinions and reasoning and we do not find a sufficient basis to conclude that he misapplied the AMA Guides in this case. It is apparent that he did not conclude that the claimant's nonsurgically treated injury, under the medical circumstances he found, fit the necessary criteria to come under Table 49, II. of the AMA Guides. *Compare* Texas Workers' Compensation Commission Appeal No. 93875, November 15, 1993, a case involving a surgically treated disc lesion. Finding sufficient evidence to support the determination of the hearing officer, we affirm her decision and order.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge