APPEAL NO. 950347

This appeal is brought 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, with (hearing officer) presiding as hearing officer on December 6, 1994, with the record closing on January 31, 1995. The two issues before the hearing officer were: (1) should (Dr. S) or (Dr. K) be considered the Texas Workers' Compensation Commission (Commission)-selected designated doctor to assess the respondent's (claimant) impairment rating (IR), and what is the claimant's IR. The hearing officer determined that Dr. K was the Commission-selected designated doctor who determined the claimant's IR after she reached maximum medical improvement (MMI) by operation of law and that the claimant's IR is 41% as certified by Dr. K. The appellant (carrier) requested review urging that the Appeals Panel reverse the decision of the hearing officer and render a decision that Dr. S is the Commission-selected designated doctor and that the claimant's IR is 25% as certified by Dr. S.

DECISION

We reverse and render.

On (date of injury), the claimant was injured when an unlatched hood of an automobile came up, hit her, and knocked her back. She felt pain in her left shoulder, neck, and back. Dr. S was selected by the Commission as the designated doctor to determine whether she had reached MMI, and if so, the date of MMI and her IR. Dr. S in a Report of Medical Evaluation (TWCC-69) dated March 9, 1993, certified that the claimant reached MMI on November 6, 1992, with a six percent IR. On April 15, 1993, (Dr. P) performed an anterior fusion at C5-C6 and C6-C7. At a benefit review conference (BRC) held later in 1993 the parties agreed that because of the surgery the certification of MMI and IR by Dr. S was not valid. By letter dated February 11, 1994, the Commission appointed Dr. K as the Commission-selected designated doctor. In a letter dated March 22, 1994, Dr. K reported that the claimant had lumbar surgery scheduled for the next month, that she had not reached MMI, and that an IR could not be given at that time. On April 21, 1994, the claimant had a hemilaminectomy and diskectomy at L5-S1. In a letter dated July 19, 1994, Dr. K reported that the claimant had reached MMI by operation of law in May 1994, that her IR is 55%, and that he thinks that her IR is artificially high due to the short length of convalescence since her surgery. On December 7, 1994, the hearing officer wrote to Dr. S and Dr. K asking them if they would again examine the claimant and test her range of motion (ROM). After receiving responses from the doctors, an appointment with Dr. K was made for January 4, 1995, and an appointment with Dr. S was made for January 6, 1995. In a TWCC-69 dated January 18, 1995, Dr. S certified that the claimant's IR is 25% and in a letter dated January 19, 1995, Dr. K assigned a 41% IR. Dr. K reported that he did not again examine the claimant, but he did attach the results of new ROM tests dated January 5, 1995.

In reaching her decision, the hearing officer explained that Dr. S was selected to resolve the initial dispute regarding the claimant's MMI and IR; that that dispute was resolved by the parties agreeing that the claimant had not reached MMI; that a new and distinct dispute arose regarding the claimant's MMI and IR; that Dr. K was selected by the Commission to resolve that dispute; and that Dr. K was not selected to replace Dr. S but was selected to resolve a separate and distinct dispute. The hearing officer also explained that she found the January 1995 reports of Dr. S and Dr. K were made in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association; that neither is against the great weight of the other medical evidence; and that only the report of Dr. K is entitled to presumptive weight.

We have on numerous occasions written about the requirement to have one designated doctor to resolve a dispute of MMI or IR. In Texas Workers' Compensation Commission Appeal No. 93045, decided March 3, 1993, the Appeals Panel wrote:

> The need or desirability for the Commission to select a second designated doctor should be very limited and restricted to a situation such as, for example, where an initially appointed doctor cannot or refuses to comply with the requirements of the 1989 Act.

In Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993, the Appeals Panel wrote "[w]e note that the appointment of multiple designated doctors to render opinions on the same issue does not appear to have been contemplated by the 1989 Act, given the presumptive weight to be accorded to the designated doctor's opinion." In another case the designated doctor certified that the claimant reached MMI on January 7, 1993, and assigned a five percent IR; the claimant had surgery on June 9, 1993, and the same designated doctor did not change the date the claimant reached MMI and increased the IR to 10% to account for the spinal surgery. The hearing officer determined that the claimant reached MMI on January 7, 1993, with a 10% IR as certified by the designated doctor in his final report, and the Appeals Panel affirmed. Texas Workers' Compensation Commission Appeal No. 931121, decided January 21, 1994. In Texas Workers' Compensation Commission Appeal No. 94978, decided September 8, 1994, the Appeals Panel reversed and remanded for the hearing officer to determine if surgery performed after the claimant reached MMI by operation of law resulted in a change in the IR.

We do not agree that Dr. K was selected as the designated doctor to resolve a separate and distinct issue. Dr. S was selected to resolve the disputed issues of whether the claimant reached MMI, and if so the date of MMI and the IR. Even after the claimant reached MMI by operation of law, Dr. S remained the doctor to render a report to assist in resolving the remaining disputed issue of the IR. The fact that the claimant underwent two surgeries did not change the issue. Dr. S remained willing and able to assign an IR and did so. The appointment of Dr. K as a Commission-selected designated doctor while Dr. S was still serving in that capacity was not proper.

We reverse the decision of the hearing officer and render a decision that Dr. S is the designated doctor selected by the Commission to assign an IR for the claimant's (date of injury), injury and that the claimant's IR is 25% as assigned by Dr. S.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge