APPEAL NO. 950053
FILED FEBRUARY 22, 1995

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 on October 26, 1994. Addressing the disputed issues, he determined that the appellant (claimant herein) did not sustain a compensable head injury in addition to his back injury on _____, and that in accordance with a report of a Texas Workers' Compensation Commission (Commission)-selected designated doctor, he reached maximum medical improvement (MMI) on October 28, 1993, with a zero percent impairment rating (IR). The claimant appeals expressing his disagreement with the hearing officer. The respondent (carrier) replies that the decision and order of the hearing officer are supported by sufficient evidence and should be affirmed.

DECISION

We affirm.

The claimant was an oil field worker. It was not disputed that on _____, he sustained a compensable back and elbow injury when he fell backwards onto some pallets. He contends that he also struck his head when he fell which resulted first in swelling and then a dent in his skull. As a result, he claims he has blackouts and dizzy spells accompanied by an upset stomach.

The claimant said he first sought treatment from (Dr. L), who on March 8, 1993, diagnosed cervicobrachial syndrome, irritation of the lumbosacral plexus and acute sprain/strain of the lumbar spine. No mention is made of a head injury in Dr. L's report. The claimant testified he told Dr. L he had a "knot" on his head, but was told it was nothing and would cure itself. In a letter of September 9, 1993, Dr. L reported the claimant as having occasional dizzy spell "which cause him to black out and he becomes disoriented." He recommended evaluation by a neurologist. On October 26, 1993, (Dr. C), a neurologist, evaluated the claimant. He noted a "fairly marked depression in the mid to right central parietal area which patient swears up and down did not have prior to the accident." He concluded that the episodes described by the claimant sounded "very much like some type of seizure," possibly a post-traumatic seizure disorder. He recommended further testing, not all of which was approved. A December 27, 1993, EEG was reported as normal.

It was not disputed that (Dr. G) was selected by the Commission as designated doctor to determine MMI and assign an IR. On September 28, 1993, he examined the claimant and recorded his complaints of headache and associated dizzy spells and blackouts. The claimant told Dr. G that he thought his head was "sunk in" or indented as a result of his fall. Dr. G speculated that this indentation may be normal for the claimant, "but I do not know for sure." His gross neurological examination of the claimant was

normal. He diagnosed "migraine (For lack of better diagnosis)," and suggested the claimant see a neurologist. On August 15, 1994, Dr. G again examined the claimant and concluded, based on the medical report of (Dr. B), a neurologist, that the claimant may have a seizure disorder, but he had no "independently verifiable information" to confirm this. For this reason he gave him no IR for a head injury.

On April 12, 1994, (Dr. B), a neurologist, completed a clinical neurologic evaluation of the claimant which he found to be "unremarkable." An MRI of the brain on April 18, 1994, was normal as was an EEG done on April 21, 1994. He concluded that the latter test was consistent with, but not diagnostic of, a seizure disorder. On June 17, 1994, he provided a diagnosis of "probable complex partial seizures on the basis of the patient's closed head injury which the patient suffered on _____."

On October 7, 1994, (Dr. M), a neurologist, examined the claimant at the carrier's request and concluded that his examination did not reveal "anything in the way of neurologic change to suggest significant intracranial pathology." He also found nothing in x-rays "to definitely suggest trauma" to the head. He found the cranial nerves intact and "nothing in the way of neurologic deficit." He, nonetheless, found the claimant's symptoms "compatible with some sort of unusual convulsive disorder . . . . The onset of these, a fairly short period of time after head injury, certainly suggests that as the source of his trouble and I think that in all medical probability [Dr. B's] opinion is accurate."

On September 8, 1994, (Dr. N) was requested by the Commission to determine whether the claimant's head problems were related to the accident of _____. Dr. N reviewed existing medical records and examined the claimant on September 30, 1994, to provide a neurologic and cognitive assessment. He found the claimant's symptoms "difficult to explain" or "to assign any single meaningful causative pathology." In his report, Dr. N described "two different aspects of head injury." These include a "diffuse axonal injury" manifested by cognitive, emotional or behavioral dysfunction and "focal injury," neither of which Dr. N found present in the claimant.

Based on this evidence, the hearing officer found that the claimant did not suffer a compensable head injury when he fell on _____. On appeal, the claimant characterizes this as a "mistake." Whether this injury occurred as claimed is a question of fact. The hearing officer, as fact finder, is the sole judge of the relevance and materiality and weight and credibility of the evidence, including the medical evidence. Section 410.165. It was the responsibility of the hearing officer to determine what facts this evidence established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's

decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). While some doctors who examined the claimant connected the claimant's head problems with his fall as least to the extent that his problems developed after the fall, the hearing officer, in his discussion of the evidence, found "no objective sign of head injury, only Claimant's subjective complaints." We conclude that the reports of medical testing and the opinion of Dr. N provided sufficient evidence to support the decision of the hearing officer that the claimant did not sustain a compensable head injury.

The claimant also appeals the findings and conclusions of the hearing officer that Dr. G's certification of MMI and IR was entitled to presumptive weight.

Pursuant to Sections 408.122(b) and 408.125(e), the report of a designated doctor selected by the Commission has presumptive weight and the determination of MMI and IR shall be based on that report unless the great weight of the other medical evidence is to the contrary. "Great weight" means more than an equal balancing or even a preponderance of the medical evidence, and whether the great weight of the other medical evidence is contrary to the report of the designated doctor is a factual determination to be made by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We have held that only other medical evidence, not lay opinion, can constitute the great weight necessary to overcome the report of a designated doctor. Texas Workers' Compensation Commission Appeal No. 92395, decided September 16, 1992. The claimant's opinion that he has not yet reached MMI because he is still undergoing treatment and was in the hospital after the hearing, though obviously sincere, is not medical evidence on this issue and perhaps confuses the attainment of MMI with pain free status, a not uncommon misunderstanding. MMI does not always mean that a claimant will be pain free, Texas Workers' Compensation Commission Appeal No. 92312, decided August 19, 1992, but only that the claimant's condition, from a medical point of view, has more or less stabilized. Texas Workers' Compensation Commission Appeal No. 94368, decided May 6, 1994. The fact that other doctors certify MMI to have occurred near the time of their examination, does itself not refute the conclusion that MMI could not have occurred earlier and would not require the hearing officer to reject the designated doctor's report in favor of the report containing a later date of MMI.

With regard to the correct IR, Dr. G considered, but declined to assign a rating for the claimed head injury because he did not consider that part of the compensable injury. The hearing officer found, and we have affirmed, that the claimant did not suffer a compensable head injury. Pursuant to section 401.011(24), an IR is given only for permanent impairment resulting from a compensable injury. We have also held that in assigning an IR, a doctor should rate only the compensable injury. Texas Workers' Compensation Commission Appeal No. 931098, decided January 18, 1994. Therefore, we find no error in Dr. G's failure to assign a rating for the claimed head injury. The zero

percent IR assigned by Dr. G was only for the claimant's back injury and is the same rating given by all other doctors who rated the claimant's compensable spine injury. The only variance in these certifications, as we noted above, is the date of MMI which generally reflected the date of the examination with some being earlier and some later that Dr. G's date of MMI. We conclude that the hearing officer correctly accorded presumptive weight to the report of Dr. G, the designated doctor, and that the great weight of the other medical evidence was not contrary to this report. We will not substitute our judgment for that of the hearing officer where, as here, his findings and conclusions are supported by sufficient evidence.

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge