APPEAL NO. 980199
FILED MARCH 18, 1998

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 January 7, 1998, with hearing officer. With regard to the issues at the CCH, she determined that the respondent's (claimant) _____, compensable right knee injury extends to his back and head, and that the date of maximum medical improvement (MMI) and the impairment rating (IR) cannot be determined. The appellant (carrier) appeals, seeks a reversal of the decision and argues the claimant reached MMI on April 15, 1997, with a nine percent to 11% IR. The claimant responds and seeks an affirmance of the decision.

DECISION

We affirm.

The parties stipulated that the claimant sustained a right knee injury on _____. It is not disputed that his treating doctor, (Dr. B), attempted to perform arthroscopic surgery on his right knee surgery on January 13, 1997, that there were problems with the epidural anesthetic procedure and that the surgery was ultimately canceled. The claimant testified at the CCH that he remembered the surgical team injecting a 10-inch needle into his back 12 times during that procedure and that his right leg twitched when they made the injections.

The anesthesiologist in the January 13, 1997, surgical attempt, (Dr. SW), noted three attempts to achieve the epidural injection. According to the notes from the nurse, (Nurse D), the claimant complained of "numbness only in buttocks from the attempted spinal," and was administered a small dose of narcotics for back pain. According to Dr. B's January 20, 1997, report, the surgery was aborted because of "anesthetic problems inclusive of not being able to insert properly a spinal needle because of the exceptional weight of the patient, greater than 400 pounds." On February 3, 1997, Dr. B performed a successful partial medial meniscectomy surgery, with an epidural anesthesia. On April 15, 1997, the carrier-selected required medical examination doctor, (Dr. A), noted that the claimant complained of low-back pain and headaches, and certified that he reached MMI "with regard to the right knee," with an eight percent IR. On April 29, 1997, Dr. B agreed with Dr. A's certification, returned him to work with limitations for one month and with no restrictions thereafter.

The claimant changed treating doctors to a chiropractor, (Dr. C), who on April 30, 1997, diagnosed a right knee sprain or strain, a right knee lesion, dislocated lumbar vertebrae and a headache, and excused him from work. On May 5, 1997, Dr. C noted the claimant's low-back pain complaints. Dr. C referred the claimant to a medical doctor, (Dr. G), who on May 19, 1997, diagnosed a right knee cartilage tear, a low-back spasm and a headache. On June 2, 1997, Dr. C stated that the claimant's symptoms included "headaches, depression, nervousness, difficulty sleeping, loss of energy, feeling tired and

run down in the mornings, stiffness associated with his low back down his right leg . . . ." and that he did not experience the symptoms prior to the compensable injury. On July 10, 1997, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, (Dr. ST), evaluated the claimant and noted a history of "lower back pain and numbness over his right anterior thigh, which he states is the result of an epidural procedure that was performed to help control his knee pain." On August 22, 1997, Dr. C opined that during the January 3, 1997, surgical attempt:

> The surgical team tried a dozen times to give him a spinal block and finally canceled surgery. On one of the attempts a nerve was insulted and caused the leg to twitch.

An injury is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(25). The claimant contends that the problems with the spinal tap insertion caused him back pain and headaches and that they were naturally resulting from the damage he sustained to his right knee. The importance of the extent of the injury issue in the case under review is its relationship to the IR. An IR is "the percentage of permanent impairment of the whole body resulting from a compensable injury." Section 401.011(25). An impairment is "any anatomic or functional abnormality or loss existing after [MMI] that results from a compensable injury." Section 401.011(24). Therefore, whether the claimant's right knee injury extends to his back and head relates to whether any anatomic or functional abnormalities to his back and head result from his compensable right knee injury. The issue of the extent of an injury is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92653, decided January 21, 1993; Texas Workers' Compensation Commission Appeal No. 92654, decided January 22, 1993.

The contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); *see also* Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Although the medical evidence does not specify that the January 13, 1997, surgical attempt on the claimant's right knee resulted in his back and head conditions, the hearing officer may have inferred such an association from Dr. C's reports. We conclude that the determination that his _____, compensable right knee injury extends to his head and back is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain, *supra*.

An IR is determined by using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Section 408.124. The report of the designated doctor has presumptive weight, and the Commission shall base its determinations as to whether an employee has reached MMI and as to the IR on that report "unless the great weight of the other medical evidence is to the contrary." Section 408.125(e). The carrier argues Dr. ST's report should have been afforded presumptive weight but also argues that he improperly applied the AMA Guides to his observations. It argues we recalculate his IR to nine percent to 11%. The reason the hearing officer did not afford presumptive weight to Dr. ST's report is reflected in her finding of fact that "[n]o certification of [MMI] and [IR] has been made which includes Claimant's full extent of injury," and her conclusions of law that MMI and IR "cannot be determined until the entire compensable injury is considered." We agree with her rationale, given the facts of the case for cases like the one under review. Where the extent of an injury is a threshold issue which was not resolved prior to the designated doctor's impairment evaluation, it is appropriate for the hearing officer to find that the date of MMI and the IR may not yet be determined. *See* Texas Workers' Compensation Commission Appeal No. 970187, decided March 24, 1997. The hearing officer did not abuse her discretion in concluding that the date of MMI and the IR may not yet be determined.

The decision is not against the great weight and preponderance of the evidence and the hearing officer did not err. Therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge