APPEAL NO. 991723

In Texas Workers' Compensation Commission Appeal No. 990832, decided June 7, 1999, the Appeals Panel reversed the hearing officer's decision against appellant (claimant) and remanded the case to the hearing officer. On July 1, 1999, a contested case hearing (CCH) on remand was held. Claimant appeals the hearing officer's decision on remand that her compensable injury of _____, does not extend to reflex sympathetic dystrophy (RSD); that she reached maximum medical improvement (MMI) on March 26, 1996, with a zero percent impairment rating (IR), as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission); and that she did not have good cause for failing to attend the CCH held on March 24, 1999. Respondent (self-insured) requests affirmance.

DECISION

Affirmed.

Medical reports reflect that claimant sustained an injury to her right hand while working in the self-insured's dietary department on _____, when she was removing trays from a cart and the shelf snapped back and caught her thumb and fingers between the bottom and side of the cart. Medical reports refer to the injury as a crush injury or contusion. Medical reports also reflect that x-rays of the right hand were negative for fracture or other abnormalities and that claimant was initially diagnosed as having a sprain Dr. L diagnosed tendinitis and referred claimant to Dr. H for possible RSD. Dr. H became claimant's treating doctor and he diagnosed claimant as having RSD, which he said is also called complex regional pain syndrome (CRPS). Dr. H's reports reflect that several other doctors who have examined claimant for her 1993 work injury diagnosed claimant as having RSD. Claimant has also treated with Dr. JM for her 1993 work injury and he also diagnosed claimant as having RSD. Dr. K, who also treated claimant for her 1993 work injury, stated that claimant has many of the hallmarks of RSD/CRPS.

Dr. W examined claimant on referral from Dr. H, and he wrote that he found no convincing evidence of RSD and that he was unable to arrive at a definite diagnosis. Dr. F examined claimant on March 26, 1996, and in a Report of Medical Evaluation (TWCC-69) dated April 10, 1996, reported that claimant reached MMI on March 26, 1996, with a zero percent IR. The benefit review conference (BRC) report reflects that the parties resolved the MMI dispute by agreeing to the March 26, 1996, date of MMI, which the BRC report states was the date of statutory MMI. Dr. F wrote that he found no objective evidence of RSD at the time of examination. Dr. H indicated his agreement with the MMI date and IR assigned by Dr. F on the bottom of Dr. F's TWCC-69. In another report, Dr. H wrote that he had referred claimant to Dr. F for an IR and that Dr. F is not claimant's treating doctor.

Dr. K referred claimant to Dr. CU, D.C., for an IR and Dr. CU examined claimant and reported in a TWCC-69 dated April 25, 1998, that claimant reached MMI on March 26, 1996, with a 22% IR. In another TWCC-69 dated May 19, 1998, Dr. CU reported that

claimant reached MMI on March 26, 1996, with a 45% IR. Dr. CU diagnosed a wrist sprain and RSD. Dr. K wrote that he reviewed Dr. CU's findings and that he felt that Dr. CU's testing was thorough and accurate.

Dr. C reviewed claimant's medical records at self-insured's request but did not examine claimant, and he wrote in July 1998 that the records indicate no objective evidence that claimant has RSD, that the IRs assigned by Dr. CU were way out of line and had no objective basis, and that it appeared that claimant had reached MMI on March 26, 1996, with a zero percent IR as reported by Dr. F.

The Commission chose Dr. CM as the designated doctor, and he examined claimant on July 29, 1998, and did a thorough review of her history and medical records. Dr. CM noted the differing medical opinions as to whether claimant has RSD and also noted that Dr. J had diagnosed claimant as having RSD and had assigned her a five percent IR. Dr. CM also noted that Dr. Z did not diagnose RSD but that Dr. WO had made that diagnosis. Dr. CM wrote that it was difficult to determine whether claimant had early RSD but that, if she did, it had resolved. He stated that he did not find any of the physical signs that would be expected in someone with longstanding RSD, that it appeared that claimant has significant functional overlay, and that he was unable to establish an organic etiology for claimant's significant symptoms. Dr. HA, a psychologist claimant has been treating with, wrote that claimant has a chronic pain disorder and was critical of Dr. CM's report.

Claimant had the burden of proof with regard to the issue of whether her compensable injury extends to RSD. With regard to that issue, the hearing officer found and concluded that the compensable injury of _____, does not extend to or include RSD. There is conflicting evidence with regard to the RSD issue. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision on the RSD issue is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As noted, the MMI issue was resolved at the BRC. With regard to the IR issue, Section 408.125(e) provides that, if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The hearing officer found that the report of Dr. CM was not overcome by the great weight of other medical evidence and concluded that claimant reached MMI on March 26, 1996, with a zero percent IR, as reported by Dr. CM. The conflicting evidence with regard to the IR issue was for the hearing officer to resolve as the trier of fact. We

conclude that the hearing officer's decision on the IR issue is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, *supra*.

Claimant appeals the hearing officer's determination that she did not have good cause for failing to attend the prior CCH setting of March 24, 1999. Claimant testified that the legal assistant of the attorney who had previously represented her had informed her that the prior CCH had been continued and that that is why she did not appear at that CCH. The evidence reflects that the prior CCH was not continued and that it was not until the evening before the prior CCH that claimant's attorney made a written request for a continuance and that that request did not meet the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.10(c) (Rule 142.10(c)), because it did not state the reason for continuing the CCH and was not sent to the Commission no later than five days before the CCH. We cannot conclude that the hearing officer abused his discretion in determining that claimant did not have good cause for failing to attend the March 24, 1999, CCH.

Claimant contends that she did not have sufficient time to prepare her case and objects to having had to present her case on July 1, 1999. By order dated June 16, 1999, the hearing officer denied claimant's request for a continuance of the July 1, 1999, CCH. We cannot conclude that the hearing officer abused his discretion in denying the request for continuance.

Several exhibits offered by claimant were excluded by the hearing officer, after objection by self-insured, based on the hearing officer's ruling that there was not good cause for failing to timely exchange those exhibits with self-insured. The excluded exhibits were not exchanged until the day of the July 1, 1999, CCH. We cannot conclude that the hearing officer abused his discretion in excluding the exhibits. *See* Rule 142.13(c). We note that much of the information in excluded medical exhibits was summarized in the reports of other doctors that were admitted and thus much of the medical information favorable to claimant's case that was in the excluded medical reports was before the hearing officer for his consideration.

Self-insured contended at the July 1, 1999, CCH that our decision in Appeal No. 990832, *supra*, which remanded the case back to the hearing officer, was not issued within 30 days of its written response to claimant's appeal. *See* Section 410.204(a). Commission records reflect that self-insured's response was filed on May 6, 1999, and that Appeal No. 990832 was filed on June 7, 1999. The hearing officer made no ruling on self-insured's contention but states in his decision that the jurisdictional contention was well founded. We disagree. The 30th day after May 6, 1999, was Saturday, June 5, 1999. Thus, under Rule 102.3(a)(3), the 30-day period for issuing the decision was extended to Monday, June 7, 1999. As we noted in Appeal No. 990832, claimant's appeal of the first CCH decision was timely filed on April 21, 1999, which was within the 15-day filing period. *See* Section 410.202(a).

The hearing officer's decision and order on remand that claimant's compensable injury does not extend to RSD; that claimant reached MMI on March 26, 1996, with a zero percent IR; and that claimant did not have good cause for failing to attend the March 24, 1999, CCH are affirmed.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Philip F. O'Neill
Appeals Judge