APPEAL NO. 991785

On June 29 and July 30, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were maximum medical improvement (MMI) and impairment rating (IR). The hearing officer decided that appellant (claimant) reached MMI on May 12, 1998, with a four percent IR as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission) and that claimant did not have good cause for failing to appear at the June 29, 1999, CCH. Claimant contends that the hearing officer erred in every finding of fact and conclusion of law decided against claimant and requests reversal of the hearing officer's decision. No response was received from carrier.

DECISION

Affirmed.

The CCH was originally set for June 23, 1999. Claimant filed a motion for continuance, which was granted, and the CCH was reset to June 29, 1999. When claimant failed to appear at the June 29th CCH, the hearing officer issued a show cause order and reset the CCH to July 30, 1999. Claimant's attorney and carrier's attorney appeared at the July 30th CCH, but claimant failed to appear. No good cause was offered for claimant's failure to appear at the June 29th CCH or the July 30th CCH. The hearing officer found that claimant did not have good cause for his failure to appear at the June 29th CCH. No argument concerning good cause for claimant's failure to appear at the June 29th CCH is presented in the appeal. We conclude that claimant has not shown that the hearing officer abused her discretion in finding that he did not have good cause for failing to appear at the June 29th CCH. Section 410.156.

The parties stipulated that claimant sustained a compensable injury on _____. A hospital emergency room report of _____, states that claimant was involved in a motor vehicle accident on that date, that claimant complained only of lower back pain, and that lumbar spine x-rays were normal. Claimant began treating with Dr. K on March 3, 1998, and Dr. K diagnosed a cervical strain and a lumbar strain. Dr. K stated that cervical x-rays showed no fractures. Dr. K prescribed medications and physical therapy, and took claimant off work. A radiologist reported that a lumbar MRI done on April 11, 1998, showed no evidence of disc herniation or stenosis, mild narrowing at T12 and L1, and degenerative disc disease at L1-2. Dr. K reported on May 13, 1998, that claimant reached MMI on May 12, 1998, with a zero percent IR.

The parties stipulated that the Commission chose Dr. A as the designated doctor. Dr. A examined claimant on July 6, 1998, and reported that claimant reached MMI on May 12, 1998, with a four percent IR.

At some point, claimant apparently began treating with Dr. M, D.C., who reviewed Dr. A's report and concluded that claimant's IR should be 13%. Dr. A reviewed Dr. M's report, but did not change the MMI date or the 4% IR he assigned to claimant. Dr. M wrote in January 1999 that he does not feel that claimant has reached MMI. Dr. M diagnosed claimant as having strain/sprain of the cervical, lumbar, and thoracic spine. Dr. M referred claimant to Dr. H, who wrote that the lumbar MRI done in April showed findings consistent with minimal degenerative changes probably consistent with claimant's age. Dr. H diagnosed claimant as having functional overlay with posttraumatic lumbar syndrome, thoracic strain, and posttraumatic cervical syndrome, and recommended a thoracic spine MRI because he believed claimant could have a herniated disc of the thoracic spine. A radiologist reported that a thoracic spine MRI done on March 15, 1999, showed no herniated nucleus pulposus at any level, but did show schmorl's nodes, a mild cupping deformity, and some loss of disc signal intensity.

Section 408.122(c) provides in part that the report of the designated doctor has presumptive weight, and the Commission shall base its determination of whether the employee has reached MMI on the report unless the great weight of the other medical evidence is to the contrary. Section 408.125(e) provides in part 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 great weight of the other medical evidence is not contrary to the determinations of the designated doctor and that his findings are entitled to presumptive weight. The hearing officer concluded that claimant reached MMI on May 12, 1998, with a four percent IR, as reported by Dr. A, the designated doctor. Claimant contends on appeal that he may not be at MMI, that his IR should be greater than four percent, and that his thoracic spine should be rated. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge