APPEAL NO. 000171

A contested case hearing (CCH) was originally held on June 4, 1999, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), with presiding as hearing officer. In Texas Workers' Compensation Commission Appeal No. 991404, decided August 19, 1999, the Appeals Panel reversed the decision of the hearing officer because the designated doctor, Dr. LC, did not have all of the medical records concerning the claimant's injury when he rendered his report. It remanded for the hearing officer to send medical records concerning the respondent's (claimant) depression to the designated doctor for his consideration in determining when the claimant reached maximum medical improvement (MMI) and whether the claimant should be assigned an impairment for depression, to have Dr. LC issue another report, and to render a decision determining the date the claimant reached MMI and her impairment rating (IR). The hearing officer held another CCH on September 13, 1999, at which he discussed which medical records would be sent to Dr. LC and gave the parties the opportunity to comment on his proposed letter to Dr. LC. The hearing officer provided the claimant and the appellant (carrier) the response from Dr. LC in which Dr. LC did not change the date the claimant reached MMI, September 15, 1999; included five percent IR for depression; and certified that the claimant's IR was 16%. Another CCH was held on January 5, 2000, at which the parties presented argument. The hearing officer rendered another decision on January 7, 2000, in which he determined that the claimant's depression is a permanent impairment; that the great weight of the other medical evidence is not contrary to the November 17, 1999, amended report of Dr. LC; and that the claimant reached MMI on September 15, 1997, with a 16% IR. The carrier appealed, urged that the evidence is not sufficient to support the hearing officer's determination that the claimant's depression is a permanent impairment; contended that since the claimant's depression is not permanent, impairment for it cannot be included in the claimant's IR; and requested that the Appeals Panel reverse the decision of the hearing officer concerning the claimant's IR and render a decision that her IR is 12%. A response from the claimant has not been received.

DECISION

We affirm.

Appeal No. 991404, *supra*, contains a summary of the evidence, including quotations from a January 13, 1999, report from Dr. N, a psychiatrist, and reports from Dr. AWA, a neurologist and pain management specialist. Briefly, Dr. N reported that in May 1997 he found the claimant to be suffering from a "Major Depression, Single Episode, Moderate Degree"; that later the major depression was almost resolved, with a very small amount of lingering, mild depression on some days; that several medications have been tried; that due to the length of time the claimant's depression has persisted, it was determined to be permanent; and that she had a five percent permanent IR from her psychiatric condition alone. Reports from Dr. AWA included references to depression and that it had increased during a week in September 1997. In a report dated May 19, 1997,

Dr. P, a psychologist, said that it was his impression that the claimant had depression, secondary to chronic pain. In a report of a psychological evaluation dated September 10, 1999, Dr. L, a psychologist, stated that the claimant had pain beyond the primary intervention phase with significant impairment of daily functioning, that there were indications of significant depressive symptomology, and that the claimant was in need of continued psychiatric and psychological treatment.

In a letter to Dr. LC dated September 30, 1999, the hearing officer stated that he was sending reports from Dr. AWA, Dr. P, Dr. N, and Dr. L; asked whether the claimant's depression should be classified as permanent or not, as defined in paragraphs 1.1, 1.3, and 2.0 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association; asked if he changed his report concerning MMI and IR; and requested that he complete another Report of Medical Evaluation (TWCC-69) and include a narrative discussing his conclusions about the claimant's mental depression.

In a letter to the hearing officer dated November 17, 1999, Dr. LC stated that he was in agreement with the report of Dr. N dated January 13, 1999; that the rationale for his agreement was that the current physical problem had been determined to be a permanent condition and since the depression was secondary to it, the five percent impairment is reasonable; that it was his opinion that the depression is a secondary process involved in the permanent impairment assessment of her lower back difficulty, and as this has been determined to be a permanent condition, it was his opinion that this secondary condition would also be permanent; that there had been periods of exacerbation and improvement of her depression during the course of her treatment; and that he did not expect it would completely be resolved any more than her other condition will completely be resolved in the future. Dr. LC did not change his report that the claimant reached MMI on September 15, 1997.

When Dr. LC rendered his report in September 1997, he did not have all of the medical records concerning the claimant. He was provided the medical records concerning the claimant's depression and amended his report to include five percent for depression and certified an IR of 16%. The hearing officer gave presumptive weight to the amended report of Dr. LC; determined that the great weight of the other medical evidence is not contrary to the reports of Dr. LC; and concluded that the claimant reached MMI on September 15, 1997, with a 16% IR. The hearing officer resolves conflicts in expert evidence and assesses the weight to be given to expert evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). His Decision and Order clearly indicates that he considered the arguments made by the carrier at the CCH. In it, he also said there was other psychiatric and psychological medical evidence that is not contrary to the response from the designated doctor. The determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge