

APPEAL NO. 000359

On January 24, 2000, 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 hearing officer resolved the disputed issues by deciding that respondent (claimant) reached maximum medical improvement (MMI) on January 14, 1999, with a 22% impairment rating (IR) as determined by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission), and that claimant had disability from November 4, 1998, to February 1, 1999, and is entitled to temporary income benefits (TIBS) for such period up until the time she reached MMI. The hearing officer further determined that claimant is entitled to 66 weeks of impairment income benefits (IIBS) based on the 22% IR. Appellant (carrier) appeals the hearing officer's decision on IR and disability. Claimant requests that the hearing officer's decision be affirmed. There is no appeal of the MMI determination.

DECISION

Affirmed.

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, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 408.101(a) provides that an employee is entitled to TIBS if the employee has a disability and has not attained MMI. The IIBS period begins the day after the date of MMI and is computed at the rate of three weeks for each percentage point of impairment. Section 408.121(a).

Claimant sustained a compensable neck injury on \_\_\_\_\_. She was treated by Dr. K. A letter in evidence states that Dr. K determined that claimant reached MMI on January 24, 1998, with an 11% IR. The Commission chose Dr. W as the designated doctor and he examined claimant in February 1998 and certified in a Report of Medical Evaluation (TWCC-69) that claimant reached MMI on January 14, 1998, with a 14% IR. Dr. K referred claimant to Dr. C who performed a cervical fusion on claimant on August 10, 1998. Following surgery, claimant underwent physical therapy. Dr. K wrote in October 1998 that, due to claimant's surgery and need for additional therapy, her MMI date and IR needed to be reevaluated. The Commission sent Dr. W the operative report and other medical records in December 1998 and asked for his opinion on MMI and IR. The Commission scheduled claimant for another examination by Dr. W on March 30, 1999. Dr. W reexamined claimant on March 30, 1999, and certified in a TWCC-69 that claimant reached MMI on March 30, 1999, with a 21% IR. Dr. S, who did not examine claimant, reviewed Dr.

W's March 30, 1999, report at carrier's request and noted her objections to the 21% IR assigned by Dr. W. Dr. S stated that claimant has at least a 10% IR. The Commission asked Dr. W for clarification of the 21% IR and Dr. W replied in June 1999 that the range of motion impairment should have been 13% and not 12% and recalculated claimant's whole body IR to be 22%. In a TWCC-69 dated June 22, 1999, Dr. W certified that claimant reached MMI on January 14, 1999, or on March 30, 1999, and assigned her a 22% IR. Dr. C wrote in June 1999 that he had taken claimant off work on July 8, 1998, and that she returned to work on February 1, 1999. Claimant said that Dr. C did not release her to return to work until February 1, 1999.

There is no appeal of the hearing officer's decision that claimant reached MMI on January 14, 1999. With regard to the IR issue, carrier appeals the hearing officer's decision that claimant has a 22% IR as reported by Dr. W and that claimant is entitled to 66 weeks of IIBS beginning the day after she reached MMI. With regard to the issue of whether claimant had disability from November 4, 1998, to February 1, 1999, resulting from the injury sustained on \_\_\_\_\_, carrier appeals the hearing officer's decision that claimant had disability from November 4, 1998, to February 1, 1999, and is entitled to TIBS for such period until she reached MMI.

The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established from the evidence presented. The range of motion worksheet dated March 30, 1999, attached to Exhibit C to carrier's appeal was not made a part of the CCH record and will not be considered on appeal. We conclude that the hearing officer's decision 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).

The hearing officer's decision and order are affirmed.

Robert W. Potts  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Judy L. Stephens  
Appeals Judge