

APPEAL NO. 000393

On February 1, 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 issues at the CCH were maximum medical improvement (MMI) and impairment rating (IR). The hearing officer found that the great weight of the other medical evidence is not contrary to the determination of the designated doctor and that his findings are entitled to presumptive weight, and concluded that appellant's (claimant) IR is four percent. Although the hearing officer made no conclusion as to MMI, we construe her decision to be that claimant reached MMI on April 25, 1998, as determined by the designated doctor. Claimant appeals the hearing officer's decision. Respondent (carrier) requests affirmance.

DECISION

Affirmed.

Section 408.122(c) provides that the report of the designated doctor has presumptive weight, and the Texas Workers' Compensation Commission (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 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.

Claimant twisted his right ankle when he stepped on a stone while working on _____, and has been treated conservatively. The parties stipulated that claimant sustained a compensable injury on _____. Dr. S, claimant's initial treating doctor, certified in a Report of Medical Evaluation (TWCC-69) that claimant reached MMI on December 10, 1997, with a zero percent IR. Claimant began treating with Dr. M, D.C., in February 1998. The parties stipulated that the Commission chose Dr. N, D.C., as the designated doctor, and he certified in a TWCC-69 that claimant reached MMI on April 25, 1998, with a four percent IR. Dr. M certified in a TWCC-69 that claimant reached MMI on May 15, 1999, with a 14% IR. The hearing officer stated in the Statement of the Evidence portion of her decision that "[t]he medical evidence presented in this case appears to be a mere difference of medical opinion and does not rise to the level of medical evidence to the contrary to rebut the presumptive weight to be given to the designated doctor's certification of MMI and [IR]." The hearing officer found that "[t]he great weight and preponderance of the other medical evidence is not contrary to the determination of the designated doctor and his findings are entitled to presumptive weight." The hearing officer concluded and decided that "[c]laimant's [IR] is 4%."

The claimant states that the hearing officer's decision did not mention MMI but contends that the hearing officer erred in finding that claimant's IR is four percent and that he reached MMI on April 25, 1998. Claimant contends that Dr. M's report overcame the presumptive weight given to the report of the designated doctor and requests that we render a decision that he reached MMI on May 15, 1999, with a 14% IR. Carrier contends that the hearing officer made an implied finding of an April 25, 1998, MMI date and requests that we affirm the hearing officer's decision that claimant reached MMI on April 25, 1998, with a four percent IR. Applying the provisions of Sections 408.122(c) and 408.125(e) to the hearing officer's statement that the medical evidence did not rebut the presumptive weight to be given to the designated doctor's certification of MMI and IR and her finding that the findings of the designated doctor are entitled to presumptive weight, we conclude that the hearing officer determined that claimant reached MMI on April 25, 1998, with a four percent IR as certified by Dr. N, the designated doctor. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and 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). We hold that the claimant reached MMI on April 25, 1998, with a four percent IR.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge