

APPEAL NO. 000792

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 11, 1999. The Appeals Panel, in Texas Workers= Compensation Commission Appeal No. 992499, decided December 17, 1999, remanded the case to the hearing officer. A hearing on remand was held on March 21, 2000. On remand the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on January 13, 1998, with a six percent impairment rating (IR) in accordance with the amended report of Dr. M, the Texas Workers= Compensation Commission (Commission)-appointed designated doctor. The claimant appeals, arguing that the MMI date and IR assessed by her treating doctor was more accurate and should be adopted instead of the MMI date and IR of the designated doctor. The respondent (carrier) replies that the hearing officer did not err in adopting the MMI date and IR of the designated doctor.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We summarized the evidence in this case prior to our remand in our decision in Appeal No. 992499, *supra*, as follows:

The parties stipulated that the carrier accepted liability for an _____, injury to the claimant. The claimant described her injury as taking place when she tripped and fell. An MRI on August 15, 1997, indicated that the claimant had anterior disc herniations at C5-6 and C6-7. Dr. S, the carrier's medical examination order doctor, examined the claimant on January 13, 1998, and certified on a Report of Medical Evaluation (TWCC-69) that the claimant attained MMI on January 13, 1998, with a zero percent IR. The claimant disputed that certification and [Dr. M], M.D., was selected as the designated doctor by the Commission. Dr. M certified on a TWCC-69 that the claimant attained MMI on January 13, 1998, with a zero percent IR. Dr. R criticized Dr. M's certification. Dr. R certified on a TWCC-69 that the claimant attained MMI on May 19, 1999, with an 18% IR.

The Commission requested clarification from Dr. M. In a June 14, 1999, letter, the Commission specifically asked Dr. M, referencing the MRI, whether the claimant had a cervical condition that would merit rating under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and why Dr. M had assessed no impairment for specific disorders of the cervical spine. Dr. M in his reply stated as follows:

In performing my review and examination on the above claimant, I do not recall specifically having the actual cervical MRI films for review other than reports. Regardless of the MRI films, however, my examination was made to assess her [MMI] as requested by [Commission], which was achieved, according to my review, on January 13, 1998, which bears no relation, of course, to the MRI films. I also assessed her percentage impairment as 0%. These determinations are achieved by my examination and training as a disability examiner and neurologist, and are not dependent on interpretation of the MRI films.

In our decision in Appeal No. 992499, *supra*, we held that Dr. M failed to provide a satisfactory explanation of why he failed to assess impairment for the claimant's herniated discs. We remanded the case to the hearing officer to advise Dr. M of the requirement that he provide a reasonable explanation or assign an IR for the specific disorder as provided by the AMA Guides. The hearing officer wrote to Dr. M on January 18, 2000, requesting clarification as we instructed. On January 25, 2000, Dr. M responded based upon the AMA Guides he had changed his opinion and that the claimant was entitled to a six percent IR due to her herniated cervical discs. Dr. M certified on a TWCC-69 dated January 25, 2000, that the claimant attained MMI on January 25, 2000, with a six percent IR.

Section 408.122(c) provides:

If a dispute exists as to whether the employee has reached maximum medical improvement, the commission shall direct the employee to be examined by a designated doctor chosen by mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission. The designated doctor shall report to the commission. The report of the designated doctor has presumptive weight, and the commission shall base its determination of whether the employee has reached maximum medical improvement on the report unless the great weight of the other medical evidence is to the contrary.

Section 408.125(e) provides:

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 impairment rating on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the commission, the commission shall adopt the impairment rating of one of the other doctors.

We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard of review, we find no error in the hearing officer's adopting the amended MMI date and IR of the designated doctor. The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge