

APPEAL NO. 001454

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 June 7, 2000. With regard to the issues before him, the hearing officer determined that the compensable injury sustained on _____, does not include depression and anxiety; and that the impairment rating (IR) is 11%, as assessed by the designated doctor whose opinion was not contrary to the great weight of the other medical evidence.

The appellant (claimant) appealed each and every finding of fact and conclusion of law "rendered against Claimant" and that the compensable injury does not include depression. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. One of the medical reports indicates the claimant sustained her injury "pulling a metal cart full of jeans . . . when she hit herself against a metal square on her right lower leg." The claimant testified through an interpreter that she sustained injuries to her low back, right hip, and right leg. The parties stipulated that the claimant reached maximum medical improvement (MMI) on February 26, 1996, per the designated doctor and that Dr. B was the Texas Workers' Compensation Commission (Commission)-appointed designated doctor.

On the issue of extent of injury, the claimant testified that she first began experiencing depression due to pain from the compensable injury about two months after the injury. However, in evidence is a report dated August 4, 1995, from Dr. A, whom the claimant noted was a carrier independent medical examination doctor, who states that he is evaluating the claimant for a _____ injury (some seven months prior to the injury at issue here) and who noted "mild to moderate anxiety-depression due to pain" for the _____ injury and included as her diagnosis "mild to moderate depression." The hearing officer comments that "[i]t thus appears that any depression and anxiety pre-date the compensable injury of _____." We would also note that Dr. S, a carrier required medical examination doctor for the injury at issue, in a report dated March 19, 1997, comments that the claimant "does report a history of depression in the past." In evidence as part of Claimant's Exhibit No. 1 is an unsigned report dated March 17, 2000, from Dr. HA, apparently a psychologist (the claimant refers to "[Dr. DM] a reputable local psychologist" but no reports from Dr. DM are in evidence), who diagnoses major depression but does not link it to either the claimant's _____ or 1995 injuries. Dr. M, referencing Dr. DM's report, comments that "I am of the opinion that such problems [anxiety, depression, etc.] in all probability are work related."

The hearing officer found:

FINDINGS OF FACT

2. Claimant sustained a compensable injury on _____. [Not the injury at issue here.]
3. After the compensable injury of _____, Claimant exhibited depression and anxiety and was diagnosed with mild to moderate depression.
4. Claimant's depression and anxiety pre-dated the _____ compensable injury and therefore did not naturally flow from the _____ injury.

Other than saying that she disagreed with the hearing officer's decision, the claimant does not specify why or how the hearing officer's findings are incorrect. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

On the issue of the IR, Dr. S, in his report dated March 19, 1997, certified MMI and assessed a five percent IR, based on a rating from Table 49, Section II B of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. Range of motion (ROM) for sacral flexion and extension was invalidated based on the straight leg raise; lateral flexion and extension, both right and left, were found to be "within normal limits"; and no motor or sensory impairment was noted. The claimant apparently disputed that report and Dr. B was appointed as the designated doctor. On a Report of Medical Evaluation (TWCC-69) and narrative both dated May 28, 1997, Dr. B certified MMI and assessed an 11% IR calculated on a five percent impairment from Table 49, Section II B; two percent loss of right and left lateral ROM (flexion and extension were invalidated) for a seven percent lumbar impairment plus four percent impairment for the right ankle; and seven percent impairment for the right knee which translates to an 11% lower extremity impairment and a four percent whole body impairment which is combined with the seven percent lumbar spine impairment for a total 11% IR. ROM worksheets are attached to the report. Also in evidence is a TWCC-69 dated March 7 and a narrative dated March 4, 2000, from Dr. M assessing a 14% IR. Dr. M assigns a seven percent lumbar impairment from Table 49, Section II B, and seven percent impairment for various loss of ROM including some impairment from Table 57 (the ankylosis of the lumbosacral region table) which are combined to arrive at the 14% IR.

Section 408.125(e) provides, with respect to the determination of an injured employee's IR, that the report of the designated doctor is entitled to presumptive weight and that the Commission shall adopt such report unless it is contrary to the great weight of the other medical evidence. The Appeals Panel has long since stated that it is not just equally balancing evidence or even a preponderance of the evidence that can outweigh the designated doctor's report but rather a "great weight" of other medical evidence is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Further, we have emphasized the unique position that a designated doctor occupies under the 1989 Act in resolving disputes concerning MMI dates and IR issues and that no other doctor's report, including that of a treating doctor, is accorded this special, presumptive status. Appeal No. 92412. We have also said that the report of the designated doctor should not be rejected "absent a substantial basis" for doing so. Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge