

APPEAL NO. 002348

Following a contested case hearing held on September 14, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) reached maximum medical improvement (MMI) on August 24, 1999, with an impairment rating (IR) of zero percent. The claimant appealed, indicating his disagreement with a number of facts set forth in the hearing officer's decision and requesting certain specific relief. The relief requested, however, will be considered general relief and a request that the hearing officer's decision and order be reversed and that the case be remanded to the hearing officer for further proceedings. There is no response in the file from the respondent (carrier).

DECISION

Affirmed.

The claimant sustained a compensable injury on _____. He underwent conservative treatment, including treatment from a chiropractor, orthopedic doctors, psychologists, and psychiatrists. The carrier had the claimant examined by Dr. G on December 2, 1998. Dr. G certified that the claimant had reached MMI on that date with a two percent IR. The claimant disputed Dr. G's IR and Dr. T was appointed to serve as the Texas Workers' Compensation Commission (Commission) selected designated doctor.

Dr. T examined the claimant on February 27, 1999. Dr. T noted the claimant's medical history, and further noted that the claimant had undergone the first in a series of three epidural steroid injections to his lumbar spine. Dr. T opined that the claimant had not reached MMI. Dr. T stated:

Many of his residual symptoms are due to the normal soft tissue healing process; however, the patient is still under active conservative care. The patient should be re-scheduled for IR following the completion of the series of steroid injections.

The claimant continued in treatment. However, there were some disruptions in his treatments due to problems with Dr. H, the doctor who was performing the epidural injections, and Dr. L. On June 7, 1999, Dr. H refused to continue to treat the claimant, citing disruptions and perceived threatening behavior by the claimant. The next day, on June 8, 1999, Dr. L indicated that he would attempt to help the claimant find another doctor and, once another doctor was located, would transfer the claimant's care to the new doctor. On October 1, 1999, Dr. L officially ceased to act as the claimant's treating doctor, although another doctor had not yet been found to take over the claimant's care. The claimant ultimately began treating with Dr. He.

On February 28, 2000, the claimant was examined by Dr. G again. Dr. G's IR as a result of that examination is the only other IR in evidence. Dr. G again certified that the claimant reached MMI on December 2, 1998, but revised his IR to zero percent. In his narrative report accompanying the later IR, Dr. G stated the following:

This examinee has been lifting a great deal of weights and has undergone physical conditioning since I last saw him. His thighs and calves are larger, and this is not flab; it is muscle.

The attempts at bending were not valid, as he did much better on his first examination of December 2, 1998. Therefore, the conclusion is that all of the treatment that he has been getting has made him worse, or that these were not valid efforts.

The examinee admits to the fact that he is getting better. He also admits to not considering retraining. He would like to continue his regular job without heavy lifting. However, I do not think that he will give up his weight-lifting, and it would be ridiculous to try to restrict him with his lifting, as he probably lifts 200 pounds easily, and presses up to 400 pounds, I would suspect, because of his muscular conditioning.

On April 26, 2000, Dr. T examined the claimant again. In the dictation from that examination, Dr. T compared the results of the two examinations and used the objective results from both as a basis for some of his conclusions. In addition to the history already contained in his earlier report, Dr. T noted the medical history following his initial examination of the claimant, including referrals and diagnostic results from Dr. B, Dr. Ba, Dr. M, and Dr. He. Dr. T remarked that in August 1999, Dr. H had obtained a discogram which revealed normal findings for the claimant's age group and that in November 1999, Dr. M had examined the claimant and had dismissed him with normal neurology findings. Dr. T had the claimant fill out an Oswestry Pain Questionnaire. The claimant scored 64% on the questionnaire, placing him in a crippling category. Dr. T noted that the claimant stated that he was unable to stand for longer than 10 minutes without increased pain and that pain prevented him from sitting for more than 10 minutes. However, Dr. T noted that the examination involved prolonged sitting and that the claimant did not exhibit any obvious discomfort. Dr. T certified that the claimant had reached MMI on August 24, 1999, with a zero percent IR.

The hearing officer determined that the great weight of the medical evidence was not contrary to the report of the Commission-selected designated doctor. The report of a designated doctor is accorded presumptive weight in the assessment of an IR and will be used unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). The burden of proof is on the party seeking to dispute the report of the designated doctor and showing that the great weight of the other medical evidence is to the contrary. Texas Workers' Compensation Commission Appeal No. 950679, decided June 13, 1995.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer that the great weight of the other medical evidence was not contrary to the designated doctor's report, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge