APPEAL NO. 002569

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 13, 2000. The issues at the CCH were whether the appellant (claimant) had sustained an injury to her cervical spine as a result of her on-the-job accident of _____; whether the respondent (self-insured) had waived its right to dispute the alleged compensability of the cervical spine; whether the claimant had reached maximum medical improvement (MMI); and, the claimant's impairment rating (IR).

The hearing officer determined that the claimant did not compensably injure her cervical spine as a result of her on-the-job accident of _____; that the self-insured had not waived its right to dispute the compensability of the claimant's allegedly compensable injury to her cervical spine; that the claimant reached MMI on December 11, 1998; and that the claimant's IR is 0%.

The claimant appealed the adverse determinations on the grounds of sufficiency of the evidence specifically contending that she did have a cervical injury; that the self-insured waited too long to dispute the compensability of the cervical injury and should be estopped from raising the defense; and that a second designated doctor should have been appointed by the hearing officer because the designated doctor failed to respond to letters from the Texas Workers' Compensation Commission (Commission) and failed to follow the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. The self-insured filed a response contending that the evidence was sufficient to support the hearing officer's determination and that the decision and order should be affirmed.

DECISION

Affirmed.

The parties submitted conflicting evidence on the issue of compensability of the cervical spine. After review of the record we find the evidence sufficient to support the hearing officer's determination that the claimant did not sustain an injury to her cervical spine as a result of her on-the-job accident of _____. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Accordingly, no

sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986)

The claimant contended that the self-insured did not timely dispute the compensability of the cervical injury after receiving written notice of the injury. The hearing officer found that despite the fact that the self-insured had received written notice of the cervical injury and did not timely dispute the compensability of the injury, under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), the self-insured had not waived the right to dispute compensability of the injury. The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000, held that "new Rule 124.3 is applicable to those cases in which a [hearing] is convened on or after March 13, 2000 [the effective date of Rule 124.3], to address a disputed issue of carrier waiver in the context of an extent of injury question, because it precludes the Commission from imposing a waiver after that date." Accordingly, we find that the hearing officer did not err in applying the provisions of Rule 124.3(c) and that the self-insured did not waive the right to dispute the compensability of the cervical injury.

The claimant contends that the great weight of the other medical evidence is contrary to the designated doctor's conclusion that the claimant reached MMI on December 11, 1998, and that her IR was 0% on the grounds that the designated doctor improperly failed to respond to Commission letters of clarification and failed to consider the cervical injury in relation to whether it was the result of an aggravation of a preexisting condition. The claimant also asserted that the range of motion test results failed to reflect a properly conducted examination. Upon review of the record we find that the hearing officer did not err by not appointing a second designated doctor for the purposes of determining the claimant's date of MMI and IR.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge