

APPEAL NO. 010513

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 February 5, 2001. The hearing officer resolved the disputed issues of extent of injury, disability, impairment rating (IR), and unilateral contact with the designated doctor by deciding:

1. The appellant's (claimant) injury of _____, was not a producing cause of cardiomyopathy.
2. The claimant sustained disability from December 14, 1998, until January 10, 2000.
3. The claimant reached maximum medical improvement (MMI) on January 10, 2000, with an IR of 15%.
4. The unilateral communication by Dr. K with the designated doctor exerted an undue influence on the designated doctor's IR certification dated June 14, 2000, but did not exert an undue influence on his certification dated September 25, 2000.

The claimant appeals these determinations, contending that the hearing officer's findings that the claimant's injury was not a producing cause of cardiomyopathy was contrary to the evidence and that there was no evidence to support the finding by the hearing officer that the communication by Dr. K affected the designated doctor's June 14, 2000, IR certification. The respondent (carrier) replies that there is sufficient evidence in the record to support the hearing officer's decision.

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.

It was undisputed that the claimant suffered an injury due to exposure to carbon monoxide at work, with a date of injury of _____. It was disputed whether the claimant's injury was a producing cause of cardiomyopathy. The claimant presented testimony from Dr. K, her treating doctor, and reports from other doctors stating that her injury caused her cardiomyopathy. The carrier presented a report from Dr. C stating that, based upon his review of the medical records, the claimant's exposure to carbon monoxide was unrelated to cardiomyopathy. On a Report of Medical Evaluation (TWCC-69) dated February 7, 2000, Dr. K certified that the claimant attained MMI on January 10, 2000, with a 35% IR. Dr. W, the designated doctor selected by the Texas Workers' Compensation Commission (Commission), certified on a TWCC-69 that the claimant attained MMI on January 10, 2000, with a 32% IR. Dr. W's IR was composed of two components—15% whole person impairment for specific brain disorder and 20% whole person impairment for cardiomyopathy.

There was conflicting evidence presented at the CCH on the issue of the extent of injury. We have held that the question of the extent of injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The question under our standard of review was whether the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Applying this standard, we find sufficient evidence to support the hearing officer's finding that the claimant's injury did not include cardiomyopathy.

Resolution of the extent-of-injury issue really resolves the issue of IR. The hearing officer, having found the claimant's injury did not include cardiomyopathy, then found that the rating of the designated doctor, excluding the impairment he assessed for cardiomyopathy, was the proper IR. Section 408.125(e) provides that the report of the designated doctor selected by the Commission should be given presumptive weight and the Commission shall base its finding of IR on that report unless the great weight of the other medical is contrary to it. The hearing officer specifically found that the great weight of the other medical evidence was not contrary to Dr. W's report insofar as it assigned an IR for the extent of injury determined by the hearing officer.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge