

APPEAL NO. 011022
FILED JUNE 21, 2001

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 April 18, 2001. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 1%, as assigned by the designated doctor. The claimant has appealed, urging that the IR assigned by his treating doctor (21%) should be accepted. The respondent (carrier) has submitted a response, asking that the hearing officer's determination be affirmed.

DECISION

Affirmed.

We first note that Claimant's Exhibit No. 3, the treating doctor's Report of Medical Evaluation (TWCC-69), is incomplete. Page 2 of the narrative report attached to the TWCC-69 form itself is missing and we are unable to determine whether additional pages are missing. There are a total of five pages in the exhibit, as indicated on the Exhibit List, although three of the five pages are duplicates of the same page. The claimant's exhibit package is stapled one time and does not appear to have been tampered with. There is nothing to indicate that these are not the documents that were submitted to the hearing officer by the claimant. The claimant had the responsibility to make sure that his exhibits were in order, as well as the burden of proof with regard to the issue at the CCH.

The claimant in this case fell off of a street sweeper and sustained a broken right wrist. After he declined surgery, his maximum medical improvement date was certified to be November 1, 2000. The hearing officer determined that the presumptive weight afforded to the opinion of the Texas Workers' Compensation Commission-selected designated doctor concerning IR was not overcome by the great weight of the other medical evidence. Section 408.125(e). 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, and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge