

APPEAL NO. 011351
FILED AUGUST 1, 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 was held on May 23, 2001. With respect to the issues before him, the hearing officer determined that appellant (claimant) was not entitled to change treating doctors pursuant to Section 408.022 of the 1989 Act, and that the claimant did not have disability from August 4, 1999, through May 23, 2001. In addition, the hearing officer concluded that claimant reached maximum medical improvement (MMI) November 8, 1999, with an impairment rating (IR) of two percent, in accordance with the designated doctor's first report. Claimant appeals and seeks reversal on sufficiency grounds. Respondent self-insured (carrier) responds and urges that the Appeals Panel affirm the hearing officer's decision and order in all respects.

DECISION

We affirm.

We have reviewed the disability determination and conclude that this issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not 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). We perceive no error in the determination that claimant is not entitled to change treating doctors. Regarding the MMI and IR issues, the hearing officer did not err in according presumptive weight to the designated doctor's first report. See Texas Workers' Compensation Commission Appeal No. 960960, decided July 3, 1996.

We note that evidence attached to briefs generally will not be considered for the first time on appeal. To determine whether evidence offered for the first time on appeal requires that case to be remanded for further consideration, we consider whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). With due diligence, the documents attached to the brief could have been requested and obtained at an earlier date. For this reason, we decline to consider the reports of Dr. L and Dr. T that were created after the hearing.

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge