APPEAL NO. 011423
FILED JULY 30, 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 25, 2001. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include bilateral carpal tunnel syndrome (CTS); that the claimant reached maximum medical improvement (MMI) on January 6, 1995, with an impairment rating (IR) of zero percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission); and that the claimant had disability, as a result of her compensable injury, from _____, through January 5, 1995. In her appeal, the claimant asserts error in the determinations that her injury does not include bilateral CTS and that she reached MMI on January 6, 1995, with an IR of zero percent. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury did not include bilateral CTS. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). There was conflicting evidence on the extent-of-injury issue. The hearing officer resolved the conflicts and inconsistencies in the evidence against the claimant and he was acting within his role as the fact finder in determining that the claimant did not sustain her burden of proof on that issue. Nothing in our review of the record indicates that the hearing officer's determinations that the claimant's compensable injury does not include bilateral CTS is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that an MMI and IR report by a Commission-appointed designated doctor shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. The Appeals Panel has stated that the great weight of the other medical evidence requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including the treating doctor's report, is accorded the special presumptive status; that the designated doctor's report should not be rejected absent a substantial basis for doing so; and that medical evidence, not lay testimony, is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 960817, decided June 6, 1996; Texas Workers' Compensation Commission Appeal No. 94835, decided August 12, 1994.

The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's report. The difference between the treating doctor's certification and that of the designated doctor represents a difference in medical opinion as to whether the claimant's compensable injury caused permanent impairment. The treating doctor's opinion on that question simply does not rise to the level of the great weight of the other evidence contrary to the designated doctor's report and his MMI date and zero percent IR. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Sections 408.122(c) and 408.125(e) and in determining that the claimant reached MMI on January 6, 1995, with an IR of zero percent.

To the extent that the claimant's appeal can be interpreted as asserting error in the hearing officer's determination that the designated doctor did not amend his report in response to a request for clarification from the Commission, we perceive no error. As the hearing officer noted, the designated doctor's response to the request for clarification was not entirely clear. The hearing officer interpreted the designated doctor's response by determining that the designated doctor did not intend to amend his report by changing the zero percent IR to a six percent rating. That interpretation of the designated doctor's response is a reasonable one based on the equivocal nature of the language used by the designated doctor in his letter to the Commission. Nothing in our review of the record reveals that the hearing officer's determination that the designated doctor did not amend his rating and that he continued to certify a zero percent IR is so contrary to the great weight of the evidence as to compel its reversal on appeal.

The claimant did not appeal the factual findings related to the disability issue; however, she did appeal the conclusion of law relating to disability. The hearing officer determined that the claimant had disability for the entire period she claimed at the hearing. Thus, the claimant is not aggrieved by the conclusion of law she appeals and we will not address the disability issue further. We decline the carrier's invitation to treat the claimant's pleading as a sufficiency challenge to the period of disability found by the hearing officer. The party that is aggrieved by a determination, the carrier in this instance, has the responsibility to pursue an appeal of that determination if it desires to do so.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge