APPEAL NO. 011460
FILED JULY 26, 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 June 6, 2001. The hearing officer determined that the compensable injury sustained by the respondent (claimant) on _____, aggravated the claimant's preexisting gastroesophageal reflux disease (GERD), and was a producing cause of the claimant's GERD. The hearing officer went on to conclude that the compensable injury of _____, extends to and includes the claimant's GERD. The hearing officer also determined that the claimant's impairment rating (IR) is 19%, as certified by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The appellant (carrier) has appealed the determinations on sufficiency of the evidence grounds. The carrier also lodged objections to the hearing officer's sua sponte objection to the carrier's question to the claimant, and to claimant's "improper closing arguments." The claimant submitted a response to the appeal, urging that the Appeals Panel affirm the hearing officer's determinations on extent of injury and IR, or, in the alternative, render a decision that the IR is greater than 19%, based on medical evidence presented.

DECISION

Affirmed.

Whether a compensable injury extends to and includes a particular medical condition is a question of fact for the hearing officer to decide. The hearing officer found that the claimant's original compensable injury aggravated the claimant's preexisting GERD and was a producing cause of his GERD. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer determined that the medical evidence established that the claimant's GERD has been aggravated by the compensable injury. He noted that the condition preexisted this compensable injury, but that it had been asymptomatic for some time before the injury. After the injury, the claimant's GERD has become symptomatic, and is now a major medical condition which requires medication and causes the claimant considerable breathing and sleeping difficulties. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The hearing officer determined that the presumptive weight afforded to the opinion of the Commission-selected designated doctor concerning IR was not overcome by the great weight of the other medical evidence. Section 408.125(e). The hearing officer noted that a mere difference of opinion between the doctors is not sufficient to overcome the presumptive weight afforded to the opinion of the designated doctor. There is ample evidence in the record which supports the factual determination by the hearing officer that the correct IR is 19%. We affirm that determination and reject the claimant's suggestion that we render a higher IR.

As to the carrier's first objection concerning the hearing officer's sua sponte objection to a question asked by the carrier, we perceive no error. When the carrier explained what information they were seeking, the hearing officer suggested a line of inquiry which would be, and was, permitted. The carrier got the information desired. This objection is baseless. As to the "improper argument" objection, while it would have been better to sustain the objection, rather than overrule it, we note that the hearing officer continued by saying "And let me remind all the parties that summations are not evidence at all and will not be treated as evidence on the merits of the issues in dispute." In view of this statement that the hearing officer was not considering the matters as evidence, and our review of the hearing officer's decision and order which contains no mention of the objected-to matters, we again perceive no error.

The hearing officer's decision and order are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge