

APPEAL NO. 011495
FILED AUGUST 09, 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 June 12, 2001. The hearing officer determined the disputed issues by resolving that the respondent (claimant) reached maximum medical improvement (MMI) on August 31, 2000, with a 12% impairment rating (IR). The appellant (carrier) filed a request for review asserting that the hearing officer's determinations are against the great weight and preponderance of the evidence. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant reached MMI on August 31, 2000, with a 12% IR in accordance with the amended medical report of Dr. G, the Texas Workers' Compensation Commission (Commission)-appointed designated doctor. The 1989 Act provides that the designated doctor's report is to be given "presumptive weight, and the Commission shall base its determination of whether the employee has reached MMI on the report unless the great weight of the other medical evidence is to the contrary." Sections 408.122(c) and 408.125(e).

On June 26, 1999, the claimant was examined by the designated doctor and he determined that the claimant reached MMI on March 4, 1999, with a 7% IR. On October 12, 1999, the Commission informed the designated doctor of a dispute regarding the claimant's MMI and IR due to the omission of a body part from the designated doctor's medical report. Dr. G responded to the Commission on January 14, 2000, requesting that the claimant be scheduled for reexamination. On April 21, 2000, the designated doctor determined that the first date of MMI was invalid because pertinent medical information was not available at the time of the first examination, and a new evaluation would be necessary "when treatment is completed." On October 4, 2000, the claimant was reexamined by the designated doctor. He determined that the claimant reached MMI on August 31, 2000, with a 12% IR, and he amended his medical report accordingly. Although both the claimant and the carrier discussed the right ankle as the body part in question, the evidence clearly shows that the designated doctor's amended IR is due to the inclusion of a rating for a specific disorder of the right knee.

The Appeals Panel has held that a designated doctor may, with proper reason and in a reasonable amount of time, amend the original report of MMI and IR for various reasons, and that one reason is where there were incomplete or erroneous facts when the first report was rendered that are subsequently taken into account in amending the report. Texas Workers' Compensation Commission Appeal No. 010177, decided March 5, 2001; Texas Workers' Compensation Commission Appeal No. 000799, decided June 7, 2000. The hearing officer

determined that the designated doctor amended his medical report for a proper reason and within a reasonable period of time.

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. Section 410.165(a). 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). We will reverse the factual determinations of a hearing officer only if those determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and 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 decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge