

APPEAL NO. 011569
FILED AUGUST 14, 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 14, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) reached maximum medical improvement (MMI) on February 1, 2000, and had an impairment rating (IR) of zero percent. The claimant appeals on sufficiency grounds and seeks reversal while also contending that her attorney failed to offer certain evidence on her behalf. The respondent (carrier) responds and urges that the decision and order of the hearing officer be affirmed in all respects.

DECISION

Affirmed.

The claimant contends that her attorney should have introduced additional evidence at the CCH. The Appeals Panel has noted the agency relationship between the client and the attorney, and has indicated that such complaint was a matter between the claimant and her attorney, citing Texas Employers Insurance Ass'n v. Wermske, 162 Tex. 540, 349 S.W.2d 90 (1961), which stated that "an attorney employed to prosecute a claim for workmen's compensation is the agent of the client, and his action or nonaction within the scope of his employment or agency is attributable to the client." *Id* at 95. Even so, in this case, the evidence that the claimant contends should have been offered is of no probative value to the determination of this claim because the complaints the claimant filed against Dr. C arose after his assignment of MMI and IR.

The hearing officer did not err in determining that the claimant's MMI date was February 1, 2000, and that she had a zero percent IR. The hearing officer appropriately gave presumptive weight to the decision of the designated doctor selected by the Texas Workers' Compensation Commission, who assigned that MMI/IR to the claimant. The designated doctor reached that determination when he examined the claimant and he reaffirmed his determination when requests to clarify and supplemental records of the claimant were later sent to him for review. Though medical records and documents from the claimant's treating doctor and the carrier's doctor indicate that the claimant had a different MMI date and they assigned a different IR, the hearing officer found that the great weight of this other medical evidence was not contrary to the designated doctor's evaluations of MMI/IR.

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ.

App.-San Antonio 1964, writ ref'd n.r.e.). 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). This tribunal will not disturb the contested findings of a hearing officer unless they are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge