APPEAL NO. 011692
FILED AUGUST 23, 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 May 17, 2001. With regard to the sole issue before her, the hearing officer determined that the respondent (claimant) had not yet reached maximum medical improvement (MMI) on June 14, 2000.

The appellant (carrier) appealed the hearing officer's determination, arguing that the hearing officer erred in failing to give presumptive weight to the designated doctor's certification of the MMI date of June 14, 2000. The claimant filed a response, urging affirmance of the hearing officer's decision.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had not reached MMI on June 14, 2000, as certified by the designated doctor. Section 408.122(c) provides that if the designated doctor is chosen by the Texas Workers' Compensation Commission (Commission), the report of the designated doctor shall have presumptive weight, and the Commission shall base its determination of MMI on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the impairment rating (IR) (and MMI date) contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR (and MMI date) of one of the other doctors.

At the CCH the parties stipulated to the following: (1) the claimant sustained a compensable injury on _____; (2) the designated doctor appointed by the Commission was Dr. L; (3) Dr. L certified that the claimant reached MMI on June 14, 2000; and (4) Dr. S, the carrier's choice of physician, certified that the claimant reached MMI on April 13, 2000.

After Dr. L's examination and certification, the claimant was diagnosed with "a large torn annulus posterior centrally with severe concordant back pain and radiculopathises bilaterally" and "a large circumferential posterior centrally herniated and extruded disc impinging upon the thecal sac and neural foramina" on June 20, 2000. On November 11, 2000, the claimant underwent spinal surgery which was approved by the Commission. On February 12, 2001, the Commission sent a letter seeking clarification regarding the claimant's spinal surgery to Dr. L. The hearing officer determined that Dr. L "responded with a cursory response that he did not change his opinion and omitted any discussion of the records received or why he maintained his position, although he appeared quite adamant."

In Texas Workers' Compensation Commission Appeal No. 002929-S, decided January 23, 2001, the hearing officer determined that the claimant had not reached MMI as certified by the designated doctor because the claimant was still receiving medical treatment and the hearing officer relied on the statement of the claimant's surgeon that if the medical treatment was unsuccessful, then surgery would be considered. In this case, the hearing officer determined that since the claimant had been diagnosed with herniated spinal discs only a few days after Dr. L's certification of MMI and the claimant had spinal surgery on November 11, 2000, Dr. L's certification of MMI on June 14, 2000, was against the great weight of the medical evidence as being "premature."

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. 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 of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb the challenged factual 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 and we do not find them so in this case. 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).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge