

APPEAL NO. 011820
FILED SEPTEMBER 19, 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 July 17, 2001. The hearing officer determined that the respondent's (claimant) correct impairment rating (IR) for his compensable injury was 28%, as certified by the designated doctor. The appellant (carrier) has appealed this determination, taking the position that the great weight of the other medical evidence is to the contrary and overcomes the presumption afforded the designated doctor's IR by Section 408.125(e). There was no response submitted by the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's IR is 28%. Section 408.125(e) 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 the IR on that report unless the great weight of the other medical evidence is to the contrary. The claimant sustained a compensable wrist injury on _____, when he slipped and fell, breaking his right wrist. His wrist was initially placed in a cast, but was improperly set, leading to remedial surgery in December 1999. There was no dispute at the CCH concerning the date of maximum medical improvement, which was September 11, 2000.

The hearing officer determined that the Commission-appointed designated doctor, Dr. C, correctly assigned a 28% IR in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(j) (Rule 130.6(j)). The carrier raised several objections to the way in which the AMA Guides were applied by the designated doctor, and urged that the IR of 5% assigned by the claimant's treating doctor be accepted. The hearing officer determined that the carrier's evidence failed to persuade her that the designated doctor had improperly applied the AMA Guides. She concluded that the fact that the carrier's peer review doctor would have done things differently indicates only that there is a professional disagreement, and that the peer review doctor's opinion does not constitute the great weight of contrary medical evidence which is necessary to overcome the presumptive weight accorded to the designated doctor's opinion. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report under Section 408.125(e) and in determining that the claimant's IR is 28% as certified by the designated doctor selected by the Commission.

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.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge