

APPEAL NO. 011832  
FILED SEPTEMBER 17, 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 January 23, 2001, and reconvened on May 24, 2001, with the hearing record being closed on the later date. The hearing officer determined that the impairment rating (IR) of the appellant (claimant) is seven percent in accordance with the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor, Dr. B. Claimant appealed this IR determination and also contended that the hearing officer should have determined a different date of maximum medical improvement (MMI). Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

The general background facts of this case are set forth in the hearing officer's decision and will not be repeated here. In this case, the parties signed a Benefit Dispute Agreement (TWCC-24) and agreed that claimant's date of MMI is November 4, 1999, as certified by his treating doctor, Dr. R. The designated doctor certified that claimant's IR is seven percent, which included impairment for loss of range of motion (ROM) only.

In his appeal, claimant first contends that the hearing officer should have made a determination regarding MMI. However, that issue was decided by agreement, was not an issue reported out of the benefit review conference, and was stipulated at the hearing. Therefore, the hearing officer did not err in failing to make a fact finding regarding the MMI date.

Claimant contends the hearing officer should have found the IR certified by the treating doctor to be claimant's IR since the parties agreed that the MMI date was the date found by the treating doctor. However, the hearing officer was required to review the evidence on this issue and apply the applicable law stated in Sections 408.122(c) and 408.125(e) regarding Commission-selected designated doctor's reports and presumptive weight. The hearing officer was not permitted to merely accept the IR found by the treating doctor.

Claimant contends the hearing officer should not have considered the report from Dr. F in this case. However, in determining whether the great weight of the other medical evidence is contrary to the designated doctor's report, the hearing officer is to consider the other relevant evidence in the record. We perceive no error. We have also reviewed the other medical evidence and the hearing officer's determination that the designated doctor's IR is not contrary to the great weight of the other medical evidence. We conclude that this determination is not 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).

Claimant complains that the designated doctor did not include any impairment for specific disorders under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association for his shoulder injury. He notes that his treating doctor included impairment under Table 17, as well as impairment for loss of ROM. The designated doctor was informed about the treating doctor's rating under Table 17 and the designated doctor declined to change his report. We perceive no error in the hearing officer's IR determination.

Claimant contends he has not been reimbursed for mileage. However, this was not an issue at the hearing and we will not address it for the first time on appeal.

We affirm the hearing officer's decision and order.

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge