APPEAL NO. 011921
FILED SEPTEMBER 27, 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 11, 2001. The issues at the CCH were maximum medical improvement (MMI) and impairment rating (IR) and whether the respondent (claimant herein) was entitled to supplemental income benefits (SIBs) for the first quarter. The hearing officer found, based upon an amended report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission), that the claimant attained MMI on April 23, 1998, with a 28% IR. The appellant (carrier herein) files a request for review, alleging that the Commission is without authority to seek clarification from a designated doctor; that the correct MMI date is December 30, 1997; that the correct IR is 10%; and that the claimant's underemployment during the first quarter was not a direct result of the compensable injury. The hearing officer's determination that the claimant is not entitled to SIBs for the first quarter has not been appealed and has become final. Section 410.169. The claimant did not respond to the carrier's request for review.

DECISION

Finding sufficient evidence to support the decision and order of the hearing officer and no reversible error in the record, we affirm.

The claimant sustained a compensable injury on _____, to his head and neck. A dispute arose concerning the proper date of MMI and IR; consequently, the Commission appointed a designated doctor. The designated doctor first evaluated the claimant on April 23, 1998; assessed an IR of 10%; and certified April 23, 1998, as the date of MMI. The designated doctor amended his IR of 12% on March 26, 1999, with no change to the date of MMI. After the Commission sought clarification, pursuant to a request from the claimant's attorney, the designated doctor referred the claimant to a neuropsychologist for an evaluation. Thereafter, the designated doctor amended his report on January 2, 2001, adopting the neuropsychologist's findings regarding mental health impairment, and assessed an IR of 28% for the claimant.

The gravamen of the carrier's contention is that the Commission has no authority to seek clarification of a designated doctor's report and therefore the first report of the designated doctor should be afforded presumptive weight.

In regard to seeking clarification from a designed doctor, the Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 951194, decided September 6, 1995, citing Texas Workers' Compensation Commission Appeal No. 92595, decided December 21, 1992, stated:

> The use of a designated doctor is clearly intended under the [1989] Act to assign an impartial doctor to finally resolve disputes over MMI and [IR]. As

> we noted recently in Texas Workers' Compensation Commission Appeal No. 92570, decided December 14, 1992, it is important to realize that the designated doctor, unlike a treating doctor or a doctor for whom a carrier seeks a medical examination order under Article 8308-4.16, serves at the request of the Commission. We believe that it is the responsibility of the Commission, and not of either of the parties, to ensure that the designated doctor completes the TWCC-69 [Report of Medical Evaluation] form or otherwise supplies the information required under [Tex. W.C. Comm'n], 28 TEX. ADMIN. CODE § 130.1 (Rule 130.1). If information is nevertheless missing or unclear by the time that the [CCH] officer is asked to evaluate the designated doctor's report, it is appropriate for the hearing officer, in carrying out his or her responsibilities to fully develop the facts required, in accordance with Article 8308-6.34(b), to seek that additional information.

In addition, a Texas Supreme Court decision has stated that a cardinal rule of statutory construction is that all the language and every part of a statute must be given effect and construed together in harmony. National Surety Corporation v. Ladd, 131 Tex. 295, 115 S.W.2d 600, 603 (1938). Courts will not decide the scope or meaning of statutory language by a bloodless literalism in which the text is viewed as if it had no context. Harris County v. Williams, 981 S.W.2d 936 (Tex. App.-Houston [1st Dist.] 1998). Because Section 408.125 gives specific authority to the staff of the Commission, excluding ombudsman, to communicate with the designated doctor, there was proper authority for the Commission to seek clarification from the designated doctor regarding the claimant's medical condition.

The hearing officer's determinations will be reversed only when 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The determinations that the designated doctor's amended report of January 2, 2001, deserves presumptive weight; that the great weight of the other medical evidence is not contrary thereto; that the correct date of MMI is April 23, 1998; and that the claimant has an 28% IR, are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, we affirm each of the determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (Tex. 1951).

As to the carrier's contention that the claimant's underemployment is not the direct result of the compensable injury, the hearing officer found that the claimant is unable to return to his previous employment and has been on light-duty release to work since April 1999. The Appeals Panel has frequently stated that a finding of direct result may be affirmed based on evidence of a serious injury with lasting effects and of an inability to reasonably perform the type of work being done at the time of the injury. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995. There is sufficient evidence in the record to establish that the claimant sustained a serious injury with lasting effects such that he could no longer do the job that he had at the time of his

compensable injury, and that his unemployment was a direct result of his compensable injury. Our review of the record does not reveal that the hearing officer's direct result determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain, *supra*.

For the first time on appeal, the carrier also contends that Rule 130.6(m)[1] was violated because the additional testing, which was performed by the neuropsychologist and incorporated by the designated doctor into his amended report, was not performed within seven days of the designated doctor's physical examination of the claimant. This contention was not raised earlier, and the Appeals Panel has frequently stated that it does not consider issues raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 931028, decided December 23, 1993, and cases cited therein. Consequently, we decline to address this contention.

The decision and order of the hearing officer are accordingly affirmed.

[1]Rule 130.6(m) states: "For testing other than that listed in subsection (l) of this section, the designated doctor may perform additional testing or refer employees to other health care providers when deemed necessary to assess an [IR]. Any additional testing required by the AMA Guides [Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association] for the assignment of the [IR] is not subject to preauthorization requirements in accordance with the Texas Labor Code, §413.014 (relating to Preauthorization) and additional testing must be completed within seven days of the designated doctor's physical examination of the employee."

The true corporate name of the insurance carrier is **ARGONAUT SOUTHWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is

JOSEPH YANOVICH
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038-2443.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge