

APPEAL NO. 011941
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 25, 2001. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain an injury to his low back on _____, in addition to his thoracic spine; that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in appointing Dr. S, a chiropractor, as the designated doctor; that the great weight of the other medical evidence is not contrary to the designated doctor's March 12, 2001, report certifying that maximum medical improvement (MMI) was reached on March 6, 2001, and assigning the claimant a two percent impairment rating (IR); and that the claimant had disability from September 11, 2000, through March 6, 2001. The claimant appealed the hearing officer's determinations on the issues of the extent of injury, MMI, IR, and disability. The respondent/cross-appellant (carrier) appealed the hearing officer's determinations on the issues of the designated doctor's appointment, MMI, IR, and disability.

DECISION

The hearing officer's decision is affirmed.

EXTENT OF INJURY

The hearing officer did not err in determining that the claimant did not sustain an injury to his low back on _____ in addition to his thoracic spine. The parties stipulated that on _____, the claimant sustained a compensable injury to his thoracic spine, and that the claimant is not claiming a cervical spine injury. Whether the claimant sustained an injury to his low back was a question of fact for the hearing officer to determine from the conflicting evidence that was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision that the claimant did not sustain an injury to his low back on _____, is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

DISABILITY

The hearing officer did not err in determining that the claimant had disability from September 11, 2000, through March 6, 2001. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." There was also conflicting evidence on the disability issue. The hearing officer resolved the conflicts in the evidence by deciding that the claimant had disability from September 11, 2000, through March 6, 2001. The hearing

officer's decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

DESIGNATED DOCTOR

The hearing officer did not err in determining that the Commission did not abuse its discretion in appointing Dr. S, a chiropractor, as the designated doctor. It is undisputed that at the time the Commission appointed Dr. S to be the designated doctor, the claimant's treating doctor was a chiropractor. Thus, the appointment of the designated doctor was in compliance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b)(4). See Texas Workers' Compensation Commission Appeal No. 000414, decided April 6, 2000; and Texas Workers' Compensation Commission Appeal No. 010252, decided March 22, 2001.

MMI AND IR

The hearing officer did not err in determining that the claimant reached MMI on March 6, 2001, with a two percent IR as reported by the designated doctor in a report that rated the compensable thoracic injury. The designated doctor's report on MMI and IR is entitled to presumptive weight, and the Commission must base its MMI and IR determinations on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. Sections 408.122(c) and 408.125(e). The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's report of March 12, 2001, which certified that the claimant reached MMI on March 6, 2001, with a two percent IR for the compensable thoracic injury. There were conflicting medical reports regarding the MMI and IR issues. The hearing officer's determinations on the MMI and IR issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEMS
350 N. ST. PAUL
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge