APPEAL NO. 012036
FILED OCTOBER 15, 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 16, 2001. The hearing officer resolved the disputed issues by determining that the designated doctor's certification of maximum medical improvement (MMI) and impairment rating (IR) are entitled to presumptive weight, and that pursuant to the designated doctor's certification, the appellant (claimant) reached MMI on September 17, 1999, with an 8% IR. The claimant appealed, asserting that the designated doctor's certification was against the great weight of the other medical evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable lumbar injury on _____. The claimant began treating with Dr. J on September 9, 1999. Dr. J eventually diagnosed the claimant as having lumbar herniated nucleus pulposus, L4-5 and L5-S1, lumbar radiculopathy, myofascial pain syndrome, and bilateral sacroiliitis after an MRI was done in October 1999. The claimant was treated conservatively and did not improve. Dr. J's records indicate that the claimant was reluctant to undergo more aggressive treatment. On February 9, 2000, the claimant was examined by Dr. F, the carrier selected independent medical examination (IME) doctor. Dr. F certified that the claimant had reached MMI on September 17, 1999, with a 0% IR. On May 2, 2000, the claimant was examined by the Texas Workers' Compensation Commission (Commission) appointed designated doctor, Dr. S. Dr. S certified that the claimant had reached MMI on September 17, 1999, and assigned a 1% IR for loss of range of motion (ROM) in the lumbar spine, and found no neurological impairment. Upon receiving a letter of clarification from the Commission, Dr. S amended his IR certification to 8%, awarding 7% for a specific disorder and 1% for loss of ROM, and kept MMI at September 17, 1999. On October 6, 2000, Dr. J certified that the claimant had reached MMI on October 6, 2000, with a 14% IR.

On appeal, the claimant asserts that the designated doctor's certification of MMI and IR is against the great weight of the other medical evidence. Sections 408.122(c) and 408.125(e) provide for resolution of disputes regarding MMI and IR. Both sections provide(s) that when a dispute arises and a designated doctor is chosen by the Commission to resolve the dispute, the report of the designated doctor shall have presumptive weight, and the Commission shall base the determination of MMI and IR on that report unless the great weight of the other medical evidence is to the contrary. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No.

002578-S, decided December 21, 2000; Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to 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). While we agree that MMI so soon after a back injury is striking, a review of the medical records after this date indicate medical stability. In light of the allegations of denial of medical care, it is important to emphasize that the right to medical care for the injury does not end upon a finding of MMI.

Applying this standard of review, we find the hearing officer's determinations 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 **ROYAL & SUN ALLIANCE INS. CO. (CONNECTICUT INDEMNITY CO.)** and the name and address of its registered agent for service of process is

CORPORATE SERVICES COMPANY
800 BRAZOS ST.
AUSTIN, TEXAS 78701.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge