

APPEAL NO. 012059
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 was held on June 4, 2001, with the record closing on August 1, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on July 21, 1999, with a 0% impairment rating (IR) as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed, contending that she did not reach MMI until the date of statutory MMI and that her IR is 23% as certified by her current treating doctor. The respondent (carrier) responded, requesting affirmance.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant reached MMI on July 21, 1999, with a 0% IR as certified by the designated doctor chosen by the Commission. The MMI and IR report of the designated doctor chosen by the Commission has presumptive weight, and the Commission shall base its determinations of MMI and IR on that report unless the great weight of the other medical evidence is to the contrary. Sections 408.122(c) and 408.125(e).

The claimant sustained a compensable injury on _____. The claimant's initial treating doctor certified that the claimant reached MMI on April 22, 1999, with a 2% IR. The claimant changed treating doctors and disputed the report of the initial treating doctor. The Commission chose a designated doctor to determine MMI and IR. The designated doctor examined the claimant, reviewed medical records, and certified that the claimant reached MMI on July 21, 1999, with a 0% IR. At the claimant's request, the Commission sent on two occasions letters concerning the current treating doctor's disagreement with the designated doctor's report to the designated doctor, and the designated doctor provided written responses explaining her findings and standing by those findings. The current treating doctor certified on April 9, 2001, that the claimant had reached statutory MMI with a 23% IR. In response to another letter from the Commission, the designated doctor reexamined the claimant and reviewed additional medical records. The designated doctor again certified that the claimant reached MMI on July 21, 1999, with a 0% IR.

The claimant contends that the designated doctor did not assign any impairment for her compensable injury. A review of the designated doctor's initial report, subsequent report, and responses to Commission letters reflects that the designated doctor considered and addressed all parts of the compensable injury and concluded, based on physical examinations and review of the claimant's medical records, that the claimant has no impairment as defined by Section 401.011(23) from her compensable injury. The claimant contends that the designated doctor should not have invalidated range of motion (ROM)

testing. The designated doctor noted that, based on her observations of the claimant's movements when not being tested for ROM, the claimant had given minimal effort during ROM testing, and thus the designated doctor determined that no impairment should be given for ROM. The Appeals Panel has held that a designated doctor may invalidate ROM testing based on clinical observation. Texas Workers' Compensation Commission Appeal No. 010975, decided June 13, 2001.

Whether the great weight of the other medical evidence was contrary to the designated doctor's certification of MMI and IR was a fact question for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer found that the great weight of the other medical evidence is not contrary to the MMI and IR report of the designated doctor and concluded that the claimant reached MMI on July 21, 1999, with a 0% IR as certified by the designated doctor. The hearing officer's decision 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.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND** (effective September 1, 2001, the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**) and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS, 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge