APPEAL NO. 012388
FILED NOVEMBER 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 August 31, 2001. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include thoracic outlet syndrome and cervicobrachial syndrome, and that the impairment rating (IR) is 7%. The claimant appealed these adverse decisions on sufficiency of the evidence grounds. The respondent (carrier) replied, urging that the determinations of the hearing officer be affirmed.

DECISION

Affirmed.

The carrier accepted that the claimant had "overuse syndrome, bilateral," but disputed whether the compensable injury of _____, extended to thoracic outlet syndrome and cervicobrachial syndrome. Whether a compensable injury extends to and includes a particular body part is a question of fact for the hearing officer to decide. The hearing officer did not find the testimony of the claimant or the claimant's medical evidence to be sufficient to meet the claimant's burden of proof. 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 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). We will reverse a factual determination of a hearing officer only if that determination is 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

After a carrier-selected required medical examination doctor, Dr. C, certified that the claimant reached maximum medical improvement (MMI) on February 10, 2000, with a 0% IR, the claimant disputed the certification. The Texas Workers' Compensation Commission (Commission)-appointed designated doctor, Dr. G, certified MMI on October 18, 2000, with a 16 % IR. The carrier twice requested, on December 19, 2000, and January 18, 2001, that the Commission seek clarification of the IR, asserting that Dr. G included noncompensable body parts in his IR. On March 14, 2001, the Commission requested that Dr. G review and reply to the carrier's letter. Dr. G responded with a letter of clarification on March 29, 2001, stating "if the compensable body areas are the wrists and elbows, then the claimant has a 7% whole person impairment rating." The hearing officer determined

that the 7% IR is the correct IR based upon his determination that the compensable injury did not extend to thoracic outlet syndrome and cervicobrachial syndrome.

The hearing officer did not err in finding that the report of the designated doctor, as clarified, is not contrary to the great weight of the other medical evidence. The report of a Commission-appointed designated doctor certifying an IR is given presumptive weight. Section 408.125(e). A certification of IR by a designated doctor will be accepted unless the great weight of the other medical evidence is to the contrary. In this case, the hearing officer determined that the designated doctor's initial IR included body parts which were not part of the compensable injury, and that it was appropriate to use the IR which only considered the compensable injury. We find no merit in the claimant's assertion that an amended IR needs to be done on a Report of Medical Evaluation (TWCC-69). The letter of clarification leaves no doubt as to the designated doctor's rating for the body parts which the hearing officer determined to be included in the compensable injury. This tribunal will not upset the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*; In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

The decision and order of the hearing officer are affirmed.

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

PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge