

APPEAL NO. 020738  
FILED MAY 8, 2002

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 February 28, 2002. The hearing officer resolved the disputed issue by deciding that the appellant/cross-respondent's (claimant) impairment rating (IR) is 0%. The claimant appealed, contending that the hearing officer erred in not adopting the 50% IR assigned by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The respondent/cross-appellant (self-insured) appealed the hearing officer's order denying its request to depose the designated doctor, but requests that that ruling be found to be nonreversible error in the event of an affirmance. The self-insured also responded to the claimant's appeal, requesting affirmance.

DECISION

The hearing officer's decision is affirmed.

It is undisputed that the claimant sustained a compensable mental trauma injury on \_\_\_\_\_. According to the benefit review conference report, the parties agreed that the claimant reached maximum medical improvement on November 7, 2000.

For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors.

We have held that it is not just equally balancing 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. 92412, decided September 28, 1992. We have also held that no other doctor's report is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. In addition, in Texas Workers' Compensation Commission Appeal No. 950166, decided March 14, 1995, we noted that a difference in medical opinion is not a sufficient basis to discard a designated doctor's report. We also pointed out in that decision that whether the great weight of the other medical evidence is contrary to the designated doctor's report is normally a question of fact for the hearing officer. However, we have held that if a hearing officer finds that the great weight of the other medical evidence is contrary to the report of the designated doctor, then the hearing officer should explain how the other medical evidence greatly outweighs the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 941482, decided December 13, 1994.

In the instant case, the hearing officer found that the 50% IR assigned by the designated doctor is against the great weight of the other medical evidence and adopted the 0% IR assigned by a doctor that examined the claimant at the self-insured's request. In the Statement of the Evidence portion of the decision, the hearing officer thoroughly analyzed the evidence and gave a detailed explanation of how the other medical evidence greatly outweighs the IR assigned by the designated doctor. As part of that explanation, the hearing officer correctly noted that two board certified psychiatrists had evaluated the claimant and that each determined that the claimant had no permanent impairment as a result of her mental trauma injury.

Although there was conflicting evidence presented in this case on the disputed issue of the claimant's IR, it is the hearing officer, as the finder of fact, who resolves the conflicts in the evidence and determines what facts have been established. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

With regard to the self-insured's cross-appeal, we find no reversible error in the hearing officer's order denying the self-insured's request to take the deposition of the designated doctor.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is, **a self-insured governmental entity**, and the name and address of its registered agent for service of process is

**SD  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge