

APPEAL NO. 020834
FILED MAY 16, 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 March 5, 2002. The hearing officer determined that (1) the compensable injury sustained on _____, does not extend to and include depression; (2) November 10, 2001, is the date of maximum medical improvement (MMI); and (3) the appellant's (claimant) impairment rating is six percent. The claimant appeals the determinations on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in determining that the compensable injury does not extend to depression as part of that injury. While we cannot necessarily agree with the statement that there is "no" evidence connecting the claimant's depression to his physical injury (his testimony would comprise such evidence), there was conflicting evidence attributing much of the claimant's distress to his dismay with the carrier. The resolution of conflicting evidence was the responsibility of the hearing officer, and her determination on the extent of injury was not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust.

The hearing officer properly gave presumptive weight to the designated doctor's report. The report of a Texas Workers' Compensation Commission-appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption, a "great weight," is more than a preponderance, which would be only greater than 50%. See Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992. The fact that an injured worker may not be entirely pain-free is not inconsistent with MMI, defined in Section 401.011(30)(A) in terms of the date at which after further material recovery or lasting improvement cannot be reasonably anticipated.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

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

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

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge