

APPEAL NO. 021209  
FILED JUNE 24, 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 April 10, 2002. The hearing officer determined that the respondent/cross-appellant (claimant) has an impairment rating (IR) of 26% for the \_\_\_\_\_, compensable injury, in accordance with the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor; that he reached statutory maximum medical improvement on February 5, 2001; and that he did not have disability from November 12, 1999, to February 5, 2001. The appellant/cross-respondent (carrier) appealed, arguing that the Commission abused its discretion in having the claimant reexamined by the designated doctor and that the hearing officer erred in determining IR. The claimant cross-appealed, arguing that the hearing officer erred in determining disability. Neither the claimant nor the carrier filed a response to the opposing party's appeal.

DECISION

Affirmed.

As to the carrier's contention that the Commission abused its discretion in referring the claimant to the designated doctor for a reexamination without first obtaining medical evidence contrary to the designated doctor's opinion, we find no abuse of discretion. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in determining that the claimant's IR is 26% as assigned by the designated doctor in his amended narrative report and Report of Medical Evaluation (TWCC-69), both dated November 12, 2001. Section 408.125(e) provides that the report of the designated doctor chosen by the Commission has presumptive weight and the Commission shall base its determination of IR on that report unless the great weight of the medical evidence is to the contrary. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 130.6(i) (Rule 130.6(i)) and Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, amended reports from the designated doctor are considered to have presumptive weight. The hearing officer considered the medical evidence and decided that the great weight of the medical evidence was not contrary to the opinion of the designated doctor that the claimant's IR was 26%. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determinations are sufficiently supported by the record and are not 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).

The hearing officer did not err in determining disability. A disability issue involves a question of fact for the hearing officer to resolve. The evidence sufficiently supports

the hearing officer's determination and it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the decision and order of the hearing officer

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

**RICHARD A. MAYER  
11910 GREENVILLE AVENUE, SUITE 600  
DALLAS, TEXAS 75243.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Roy L. Warren  
Appeals Judge