APPEAL NO. 021693
FILED AUGUST 13, 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 (CCH) was held on June 3, 2002. The hearing officer resolved the disputed issues by determining that the respondent (claimant) had disability from February 15, 2001, through the date of the CCH, and that the claimant reached maximum medical improvement (MMI) on November 12, 2001, with an impairment rating (IR) of 19%. The appellant (self-insured) appeals, arguing that the determinations of the hearing officer are contrary to the great weight of the evidence. The claimant responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The self-insured's required medical examination doctor examined the claimant and reported that the claimant reached MMI for her injury of _____, on September 8, 2000, with a 2% IR. The Texas Workers' Compensation Commission (Commission) selected a designated doctor to determine MMI and IR for the injury of _____. According to the designated doctor's initial report, he examined the claimant and reported that the claimant reached MMI on November 14, 2000, with an 8% IR. The claimant subsequently underwent a two-level spinal surgery fusion with hardware, and was assigned an MMI date of November 12, 2001, with a 15% IR, by her surgeon. The designated doctor reexamined the claimant on February 25, 2002, and reported that the claimant reached MMI on February 25, 2002, with a 20% IR. The designated doctor noted in his second report that at the time of his initial examination he was not aware of the claimant's surgical consultation, and further noted that the claimant had undergone spinal surgery since his initial examination. In response to a Commission letter for clarification, the designated doctor issued an amended report dated April 24, 2002, in which he reported that he agreed with the surgeon's MMI date, acknowledged he failed to use the combined values chart of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, and concluded that the IR is 19% rather than 20%. The hearing officer found that the amended report of April 24, 2002, contained a typographical error, and that the MMI date is November 12, 2001.

The designated doctor's MMI and IR report has presumptive weight and the Commission must base its determinations of MMI and IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. Sections 408.122(c) and 408.125(e). *See also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), which provides that the designated doctor's response to a Commission request for clarification is to be given presumptive weight, and Texas Workers' Compensation Commission Appeal No. 020645, decided May 1, 2002. Under

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. In Appeal No. 013042-s, we held that Rule 130.6(i) "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." That decision also provided our rationale for giving immediate effect to Rule 130.6(i). The Commission has left no doubt about its position on this issue. The designated doctor's "Amended Report" has presumptive weight, and the great weight of the other medical evidence was not to the contrary.

The self-insured asserts in its appeal that the "determination that the [c]laimant has disability from February 15, 2001, through the date of the hearing on June 3, 2002 and that the [self-insured] is required to pay income benefits to the [c]laimant for this period is error." The self-insured misstates the decision. The hearing officer found disability from February 14, 2001, through the date of the CCH, but he went on to state that "Temporary income benefits [TIBs] are to be paid for the period beginning on February 15, 2001, through November 12, 2001," recognizing that TIBs end at MMI, and awarding benefits to the claimant consistent with the decision. Whether a worker has disability and whether he or she has reached MMI are separate issues; it is payment of TIBs, not disability, that is ended by MMI. Sections 408.101 and 408.102(a).

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that 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. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Michael B. McShane
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge