

APPEAL NO. 021861  
FILED AUGUST 28, 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 June 19, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on January 17, 2001, with a 13% impairment rating (IR) as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed and the respondent (self-insured) responded.

DECISION

The hearing officer's decision is affirmed.

It is undisputed that the claimant sustained a back injury on \_\_\_\_\_. The issues before the hearing officer were MMI and IR. The MMI and IR report of the designated doctor chosen by the Commission has presumptive weight, and the Commission must base its determination of MMI and IR on that report unless the great weight of the other medical evidence is to the contrary. Sections 408.122(c) and 408.125(e).

In a Report of Medical Evaluation (TWCC-69) dated January 17, 2001, a doctor who examined the claimant on that date certified that the claimant reached MMI on January 17, 2001, with an 11% IR. The designated doctor chosen by the Commission examined the claimant on April 26, 2001, and reviewed the claimant's medical records, and certified in a TWCC-69 that the claimant reached MMI on January 17, 2001, with a 13% IR. The claimant's treating doctor and a referral doctor disagreed with the MMI date and 13% IR. In responding to letters from the Commission, the designated doctor explained why he did not certify a 24% IR, noting that the claimant gave poor effort on range of motion (ROM) testing and had exhibited symptom magnification, and that a review of additional medical records that were sent to him did not cause him to change his opinion regarding MMI and IR. The Appeals Panel has held that a designated doctor may invalidate ROM based on observations of suboptimal effort on the part of the claimant in testing. Texas Workers' Compensation Commission Appeal No. 021200, decided June 26, 2000. The carrier did not appeal the 13% IR assigned by the designated doctor, which includes 3% impairment for abnormal ROM. The claimant has appealed the MMI and IR certified by the designated doctor, contending that he was not at MMI until statutory MMI was reached and that his IR should be 24%.

We do not perceive that the designated doctor erred in comparing the results of his evaluation to the results of the doctor who initially certified MMI and IR, because Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(h), which was in effect at the time of the designated doctor's evaluation, required the treating doctor and the carrier to send to the designated doctor the employee's medical records relating to the condition

to be evaluated by the designated doctor. It is clear from the designated doctor's report and clarification letters that he performed a physical examination of the claimant and reviewed the claimant's medical records.

The hearing officer found that the certification of MMI and IR assigned by the designated doctor are not contrary to the great weight of the other medical evidence and decided that the claimant reached MMI on January 17, 2001, with a 13% IR, as was certified by the designated doctor. 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 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).

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

**SB  
(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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Elaine M. Chaney  
Appeals Judge