

APPEAL NO. 022800
FILED DECEMBER 18, 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 October 16, 2002. The hearing officer determined that the respondent's (claimant herein) impairment rating (IR) was 22%; that the appellant (carrier herein) waived its right to contest the claimant's entitlement to supplemental income benefit (SIBs) for the first quarter; and that the claimant is entitled to SIBs for the first quarter. The carrier appeals these determinations. The carrier argues that the hearing officer erred in relying on the designated doctor's IR. The carrier also argues that the hearing officer erred in applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(c) (Rule 130.108(c)) because it contends that this rule is invalid as a matter of law. The claimant responds that the hearing officer's decision should be affirmed. The claimant points out that the designated doctor is entitled to presumptive weight and that the opinion of the carrier's peer review doctor, who never examined the claimant, did not overcome this presumptive weight. The claimant also states that Rule 130.108(c) is consistent, not inconsistent as argued by the carrier, with the 1989 Act.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Section 408.125(e) provides:

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 impairment rating on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the commission, the commission shall adopt the impairment rating of one of the other doctors.

We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the 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, including the report of the treating doctor, 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; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying these standards, we affirm the hearing officer's finding that the great weight of the medical evidence was not contrary to the IR certification of the designated doctor.

While the carrier may feel it incumbent to raise the issue to us to preserve it for judicial review, the issue of an alleged conflict between the 1989 Act and the rules of the Commission is a matter beyond the scope of the Commission's Appeals Panel and would need to be resolved by the courts. See Texas Workers' Compensation Commission Appeal No. 022057, decided September 24, 2002. However, we do note both Section 408.147(b) and Rule 130.108(c) appear designed to give the carrier a 10-day time limit to dispute eligibility to SIBs or face waiving the right to do so.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez
Appeals Judge