APPEAL NO. 022943
FILED JANUARY 9, 2003

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 24, 2002. The hearing officer determined that appellant (claimant) reached maximum medical improvement (MMI) on June 14, 2002, with an impairment rating (IR) of zero percent. Claimant appealed these determinations, contending that he is not at MMI and that the designated doctor should have given him a higher IR. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

The hearing officer did not err in determining that claimant reached MMI on June 14, 2002, with a zero percent IR as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). Sections 408.122(c) and 408.125(c) of the 1989 Act provide that the report of a Commission-appointed designated doctor determining the date of MMI and the claimant's IR shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. Claimant asserts that the IR should include impairment for radiculopathy, but the hearing officer apparently decided that any radiculopathy was not related to the compensable injury. The hearing officer considered the conflicting evidence and found that the other medical evidence is not sufficient to overcome the presumptive weight afforded to the findings of the designated doctor, and concluded that the claimant has an IR of zero percent as 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 from the evidence presented. We conclude that the hearing officer's determinations regarding MMI and IR are 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).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

PRENTICE-HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

DISSENTING OPINION

I respectfully dissent. I think this is a case of putting the cart before the horse. The designated doctor certifies MMI and assigns IR. That is the only certification of MMI and IR. The treating doctor did not assign IR because he felt that the claimant was not at MMI because of radiculopathy. The designated doctor's IR does not include a rating for radiculopathy. The hearing officer made no findings with regard to whether the claimant's injury extended to and included any radiculopathy. Prior to giving an assignment for IR it would seem to be prudent to have a firm grasp on just what the compensable injury included. I would not make the assumption that the hearing officer made determinations regarding the extent of injury with no Findings of Fact or Conclusions of Law in that regard because the claimant's right to appeal the extent of injury to district court could be affected. I would remand back to the hearing officer to make Findings of Fact and Conclusions of Law regarding the extent of the injury.

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Roy L. Warren
Appeals Judge