

APPEAL NO. 023161  
FILED JANUARY 16, 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 (CCH) was held on November 20, 2002. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on June 11, 2002, with a 0% impairment rating (IR) as assessed by the designated doctor whose opinion was not contrary to the great weight of the other medical evidence.

The claimant appeals, asserting that "the majority of the evidence was in favor of the 5%, not to the 0%," citing a portion of the hearing officer's Statement of the Evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable low back and umbilical hernia injury on December 17, 2001. The hernia was surgically repaired and the back injury was treated conservatively. The parties agreed that there was no permanent impairment due to the hernia.

At the carrier's request the claimant was sent to a designated doctor. In a Report of Medical Evaluation (TWCC-69) and narrative, Dr. K, the designated doctor, certified MMI on June 11, 2002, with a 0% IR from Category I Table 72, page 3/110 DRE Lumbosacral Spine Categories, of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). This report was sent to the treating doctor who ordered an MRI and EMG/NCV testing.

The treating doctor's records, the MRI, and other testing results were sent to Dr. K, who, in a letter report of September 17, 2002, reviewed those records and concluded:

In my clinical opinion, physical examination does not correlate with radiculopathy in the lower extremities. In fact the exam is unremarkable. Therefore, I stand by my whole person impairment rating of 0% with an MMI date of 6/11/02.

The treating doctor subsequently referred the claimant to Dr. F, for evaluation. Dr. F in a TWCC-69 and narrative both dated November 15, 2002, certified the claimant at MMI on that date with a 5% IR using Category II of Table 72. The treating doctor agreed with this rating. The hearing officer notes that Dr. F "found muscle spasms on both sides of the lumbar spine."

The claimant argues the “majority of the evidence” supported a 5% IR citing a portion of the hearing officer’s discussion. However what that full paragraph states is:

If there was no statutory presumptive weight accorded to the [designated doctor] report, [Dr. G] report of November 20, 2002 would be adopted, as it is more convincing, and correlates better with the diagnostic testing. The evidence is not sufficient, however, to overcome the presumptive weight of the [designated doctor]. The difference in the two reports can be laid to a difference of medical opinion, and a mere difference of opinion does not constitute great weight of contrary medical evidence.

Section 408.122(c) and 408.125(c) provide that the report of the designated doctor has presumptive weight and that the Texas Workers’ Compensation Commission shall base its determinations of the date of MMI and IR on such report unless it is contrary to the great weight of the other medical evidence. The hearing officer found that the designated doctor’s report is not contrary to the great weight of the other medical evidence and, accordingly, based the MMI date and IR determinations on that report. The hearing officer is the sole judge of the weight and credibility to be given the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We are satisfied that the challenged findings of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

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

**JAVIER GONZALEZ  
3421 WEST WILLIAM CANNON DRIVE, SUITE 131  
BOX NUMBER 15  
AUSTIN, TEXAS 78745.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge