

APPEAL NO. 023242
FILED FEBRUARY 19, 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 December 3, 2002. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 18% as assigned by the Texas Workers' Compensation Commission (Commission)-selected designated doctor and that the claimant is entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) appeals those determinations. There is no response from the claimant contained in our file.

DECISION

Affirmed.

Section 408.125(e) provides, in part, that the report of the designated doctor has presumptive weight, and the Commission shall base its determination of IR on that report unless the great weight of the other medical evidence is to the contrary. Medical evidence, not lay testimony, is the evidence required to overcome the presumptive weight accorded the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992. The carrier contends that the designated doctor's report does not comply with the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 130.1 and 130.6 (Rules 130.1 and 130.6) because the report "lacked a sufficient narrative" and that the "narrative history of the medical condition is sparse at best." The narrative report provides, "[the claimant] was injured when he was butted then trampled by a longhorn cow repeatedly." We conclude that the hearing officer properly considered the medical evidence and that the requirements of Rules 130.1 and 130.6 were met.

There was conflicting evidence regarding the correct IR. The hearing officer, as finder of fact, is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision that the great weight of the other medical evidence is not contrary to the designated doctor's certification of IR is 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).

Further, the carrier appeals the hearing officer's determination that the claimant is entitled to SIBs for the first quarter. Sections 408.142 and 408.143 set forth the requirements for SIBs entitlement. Rules 130.100 through 130.110 are the administrative rules relating to SIBs. The claimant proceeded under the theory that he was totally unable to work during the qualifying period for the first compensable quarter; thus, Rule 130.102(d)(4) was dispositive of his eligibility for SIBs for that quarter. Rule 130.102(d)(4) reads:

- (d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
 - (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Although the medical records taken as a whole certainly could have been more specific, we cannot ignore the fact that the claimant had spinal surgery just two days prior to the first quarter qualifying period. The hearing officer states, "The medical evidence presented also showed Claimant continued to recover from the spinal surgery throughout the first quarter qualifying period." In light of the evidence as a whole, and the fact that the claimant had spinal surgery two days prior to the qualifying period, we believe that the hearing officer could determine that the medical records constitute a narrative report that sufficiently explains how the injury causes a total inability to work. See Texas Workers' Compensation Commission Appeal No. 000799, decided June 7, 2000.

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 that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Roy L. Warren
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge