APPEAL NO. 023300
FILED FEBRUARY 18, 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 November 27, 2002. The hearing officer determined that (1) the respondent/cross-appellant (claimant) sustained a compensable injury on _____; (2) the appellant/cross-respondent (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified the employer of an injury pursuant to Section 409.001; (3) the claimant did not have disability resulting from the compensable injury sustained on _____; (4) the claimant reached maximum medical improvement (MMI) on November 6, 2002, as certified by the second designated doctor appointed by the Texas Workers Compensation Commission (Commission); and (5) the claimant had an impairment rating (IR) of five percent as certified by the second Commission-appointed designated doctor. The carrier appeals the injury, notice, and disability determinations on sufficiency of the evidence grounds. The carrier also appeals the hearing officer's MMI determination, asserting that the appointment of a second designated doctor was improper under the applicable rules and his report is contrary to the great weight of other medical evidence. The claimant responds urging affirmance of these issues and cross-appeals the hearing officer's disability determination on sufficiency of the evidence grounds. The carrier did not file a response to the claimant's cross-appeal. The hearing officer's IR determination was not appealed and is, therefore, final.[1] Section 410.169.

DECISION

Affirmed.

INJURY, NOTICE, AND DISABILITY

The hearing officer did not err in making the complained-of injury, notice, and disability determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of 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)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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).

[1] The carrier urges adoption of the first Commission-appointed designated doctor's certification which also provides a five percent IR.

MMI

The hearing officer did not err in determining that the claimant reached MMI on November 6, 2002, as certified by the second Commission-appointed designated doctor. As stated above, the carrier contends that the appointment of a second designated doctor was improper under the applicable rules. Section 408.0041(b) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(d)(2) (Rule 130.5(d)(2)) establish the requirements for appointing a designated doctor for purposes of MMI/IR.[2] The carrier does not dispute the appointment of the second designated doctor under Rule 130.5(d)(2). Rather, the carrier essentially argues that the new rule does not apply to this proceeding because the claimant's treatment was ongoing prior to its effective date. However, we have said that Rule 130.5(d)(2) does not provide an exception for claims in progress prior to its effective date. Texas Workers' Compensation Commission Appeal No. 022467, decided November 14, 2002. We affirm the hearing officer's determination that the second designated doctor was properly appointed by the Commission.

The carrier next asserts that the second designated doctor's MMI certification is contrary to the great weight of the other medical evidence, namely, the first designated doctor's report. We view the initial MMI certification as representing a difference in medical opinion, which does not rise to the level of the great weight of medical evidence contrary to the second designated doctor's report. Accordingly, we cannot conclude that the hearing officer=s determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

[2] Section 408.0041 is effective for a request for medical examination made by an insurance carrier on or after January 1, 2002. Likewise, Rule 130.5(d)(2) is effective January 2, 2002. Commission records indicate that a designated doctor examination was first requested on or about January 23, 2002. Section 408.0041 and Rule 130.5(d)(2) are, therefore, applicable to this proceeding.

The decision and order of the hearing officer are affirmed.

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

DONALD GENE SOUTHWELL
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75265.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge