APPEAL NO. 030128
FILED MARCH 7, 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 11, 2002. With respect to the issues before her, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 25, 2002, with an impairment rating (IR) of five percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant asserts error in the hearing officer's determination of his MMI date and IR. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that Dr. G is the designated doctor selected by the Commission; and that in a report dated March 25, 2002, the designated doctor certified that the claimant reached MMI on that date with a five percent IR. The hearing officer did not err in determining that the great weight of the other medical evidence is not contrary to the report of the designated doctor, thus the hearing officer properly determined that the claimant's MMI date is March 25, 2002, and that his IR is five percent. The date of MMI and the IR are questions of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence offered. Section 410.165(a). As the finder of fact, the hearing officer is required to resolve the conflicts in the evidence, including the medical evidence. Texas Employers Ins. Co. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the difference between the reports of the designated doctor and the treating doctor is attributable to a difference in medical opinion as to whether the claimant had reached MMI on March 25, 2002. The statute gives presumptive weight to the designated doctor's reconciliation of such a difference. *See* Sections 408.122(c) and 408.125(c). The opinion of the treating doctor on the issues of MMI simply does not rise to the level of the great weight of the medical evidence contrary to the designated doctor's report. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's certification and determining that the claimant reached MMI on March 25, 2002, with an IR of five percent.

The Commission sent a request for clarification to the designated doctor, apparently forwarding the treating doctor's critique of the designated doctor's report and the diagnostic testing that was completed after the first designated doctor examination to the designated doctor. In response to that letter, the designated doctor stated that she needed to reexamine the claimant to determine if his IR should be reduced to zero percent. The claimant declined to be reexamined by the designated doctor. The hearing officer noted that the designated doctor's response was "somewhat confusing";

however, the hearing officer further determined that a review of the designated doctor's response did not demonstrate that "she did not believe that the Claimant had not reached MMI as of March 25, 2002 and that the 5% [IR] was correct at the time of her examination." We perceive no error in the hearing officer's determination in that regard.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIRST LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

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

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Terri Kay Oliver
Appeals Judge

_____
Robert W. Potts
Appeals Judge