

APPEAL NO. 030640
FILED APRIL 29, 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 February 5, 2003. With regard to (Docket No. 1), the hearing officer determined that (1) the compensable injury of (date of injury for Docket No. 1), includes recurrent herniated nucleus pulposus at L4-5, aggravation of spinal stenosis at L4-5 and L5-S1, and aggravation of bilateral lumbar radiculopathy; (2) respondent 1 (claimant) had disability from June 14, 1997, through July 9, 1998; (3) the claimant has an 18% impairment rating (IR), as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission); and (4) appellant (carrier 1) is entitled to a reduction of the claimant's impairment income benefits at a rate of 61% (11/18ths), based upon contribution from an injury on (date of injury for Docket No. 2). With regard to (Docket No. 2), the hearing officer determined that the compensable injury of (date of injury for Docket No. 2), does not include herniated nucleus pulposus at L4-5, spinal stenosis at L4-5 and L5-S1, and bilateral lumbar radiculopathy after (date of injury for Docket No. 1). Carrier 1 appeals the extent-of-injury, disability, and IR determinations on legal and sufficiency of the evidence grounds. The claimant and respondent 2 (carrier 2) urge affirmance. The hearing officer's contribution determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

EXTENT OF INJURY AND DISABILITY

Carrier 1 first asserts that the Commission lacks jurisdiction to decide the extent-of-injury issues because the Commission's earlier determination that the claimant sustained a compensable back injury on (date of injury for Docket No. 1), is on appeal to the district court and has not been finally adjudicated. Section 410.207 provides that during judicial review of an Appeals Panel decision on any disputed issue relating to a workers' compensation claim, the Commission retains jurisdiction of all other issues related to the claim.

The hearing officer did not err in making the complained-of extent-of-injury 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).

IMPAIRMENT RATING

The hearing officer did not err in determining that the claimant has an 18% impairment rating as certified by the Commission-appointed designated doctor. The parties stipulated that the claimant reached maximum medical improvement on July 9, 1998. Carrier 1 asserts the designated doctor's IR certification is contrary to the great weight of the other medical evidence because it includes ratings for conditions not included in the 1996 compensable injury and includes a rating under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, for spinal surgeries related to the 1994 compensable injury. Carrier 1's challenge to the rated injuries is premised upon its unsuccessful appeal of the hearing officer's extent-of-injury determination. With regard to the rating for prior surgeries, we have said that where the compensable injury in question is to the same area of the body and involves the same type of injury and amounts to an aggravation of an earlier injury or condition, the effects of a prior injury should not be discounted in the assessment of an impairment for a current injury. See Texas Workers' Compensation Commission Appeal No. 94602, decided June 17, 1994. Additionally, we note that carrier 1 was awarded contribution, which was not appealed, for the claimant's prior compensable injury. Accordingly, we cannot conclude that the hearing officer's IR determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier 1 is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

The true corporate name of insurance carrier 2 is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge