

APPEAL NO. 030653
FILED APRIL 22, 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 February 6, 2003. With respect to one of the disputed issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____¹, did not include an injury, in the form of reflex sympathetic dystrophy (RSD), to the low back or right hip. Regarding the other two issues before her, the date of the claimant's maximum medical improvement (MMI) and her impairment rating (IR), the hearing officer accepted the agreement of the parties that the claimant should be reexamined by the designated doctor, and that he should use 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) (AMA Guides). The claimant appeals, arguing that the great weight of the medical evidence supports that her RSD to her low back and right hip were caused by her compensable injury to her right knee and right ankle, or caused by the treatment she was given for her compensable injury. The respondent (carrier) responds, urging that the hearing officer be affirmed. Neither party appealed the MMI and IR determinations, as such, because they were a result of an agreement by the parties at the end of the CCH.

DECISION

Affirmed as modified.

The hearing officer did not err in determining that the claimant's compensable injury of _____, did not include an injury, in the form of RSD, to the low back or right hip. While the claimant argues that her compensable injury, or the treatment for her compensable injury, resulted in the RSD in her low back and right hip, the carrier argues that the medical evidence is equivocal as to whether she has RSD in those areas and/or whether it is, if at all, a result of her compensable injury or her treatment for same. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was acting within her province as the fact finder in resolving this issue in favor of the carrier and nothing in our review of the record demonstrates that the hearing officer's determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We note here that the hearing officer's Finding of Fact No. 3 should read, and is hereby modified to read, as follows: "The preponderance of the evidence shows that the Claimant does not have [RSD] in her right hip and low back that was caused by or

¹ In the issue as written on page 1 of the Decision and Order, the hearing officer wrote that the date of injury was "(wrong date of injury)," and we thus correct it to read "_____."

the result of the compensable injury of _____.” We remove the language “right lower extremity,” as the parties had an agreement with respect to that area and it was not in issue at the CCH.

We are required to comment with respect to the hearing officer’s determination based upon the parties’ agreement that the claimant should return to the designated doctor for a reexamination and MMI and IR certifications under the AMA Guides (per the agreement of the parties). Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.1(c)(2)(B)(ii) (Rule 130.1(c)(2)(B)(ii)) provides that the appropriate edition of the AMA Guides to use for certifying examinations conducted on or after October 15, 2001, is:

the third edition, second printing, dated February, 1989 if, at the time of the certifying examination, there is a certification of MMI by a doctor pursuant to subsection (b) of this section made prior to October 15, 2001 which has not been previously withdrawn through agreement of the parties or previously overturned by a final decision.

Given that the first MMI certification was made in this case in 2000, by the carrier-selected required medical examination doctor, and in the absence of evidence to suggest that this certification was withdrawn through agreement of the parties or overturned by a final decision, we note that when the claimant returns to the designated doctor for a reevaluation, given the extent-of-injury determination, she be evaluated under the third edition of the AMA Guides, in accordance with Rule 130.1 and our previous decisions.

The hearing officer's decision and order are affirmed as modified.

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

**HAROLD FISHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge