APPEAL NO. 030656
FILED APRIL 28, 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 11, 2003. With respect to the disputed issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) from her compensable injury of _____, on November 14, 2001, with a 0% impairment rating (IR), in accordance with the report of the Texas Workers' Compensation Commission (Commission)-appointed designated doctor, in his amended report, based upon an examination, dated September 12, 2002, and using 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 evidence shows that the designated doctor did not consider her bilateral carpal tunnel syndrome in his certification, and that the designated doctor was nonetheless disqualified to serve as such, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 180.21(o)(2) (Rule 180.21(o)(2)) because he shared office space with the respondent (carrier)-selected required medical examination doctor. The carrier responds, urging that the hearing officer be affirmed, as the hearing officer correctly afforded the designated doctor's opinion presumptive weight, and that the claimant, had she preserved the disqualification argument, failed to prove that the designated doctor was disqualified, as the hearing officer noted in his Statement of the Evidence.

DECISION

Affirmed.

The MMI/IR report of the designated doctor chosen by the Commission has presumptive weight and the Commission shall base its determination of MMI/IR on the designated doctor's report unless the great weight of the medical evidence is to the contrary. Sections 408.122(c) and 408.125(e). Whether the party challenging a designated doctor's report has produced the great weight of other medical evidence contrary to the report and whether the presumption afforded to the report is rebutted are questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 950561, decided May 22, 1995. In this case, the hearing officer noted that the designated doctor used the appropriate version of the AMA Guides in certifying the claimant's MMI/IR, and wrote that any difference between the treating doctor's and the designated doctor's certifications were only a difference of medical judgment or opinion. As a reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so in this case.

The claimant asserts on appeal that the hearing officer erred in not allowing her to add the designated doctor disqualification issue under Rule 180.21(o)(2) at the CCH. The carrier objected timely and often to the addition of this issue at the CCH and the hearing officer denied the claimant's request to add it. While the hearing officer appears to have substantively addressed the issue in his decision and order, Section 410.151(b) provides, in part, that an issue not raised at a benefit review conference (BRC) may not be considered unless the parties consent or, if the issue was not raised, the Commission determines that good cause exists for not requesting the issue at the BRC. Rule 142.7 provides that additional issues may be added by a party responding to the BRC report no later than 20 days after receiving it, by unanimous consent in writing no later than 10 days before the hearing, and on the request of a party if the hearing officer finds good cause. We can glean from the transcript of the CCH that the hearing officer determined that the claimant did not establish good cause for adding the requested issue, as he never added it for consideration. Also, the CCH record does not contain a copy of a written request made by the claimant, vis-à-vis a response to the BRC report. Under these facts, we perceive no abuse of discretion on the part of the hearing officer denying the claimant's request to add the additional, disqualification issue. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985); Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Edward Vilano
Appeals Judge