APPEAL NO. 030874
FILED JUNE 4, 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 March 17, 2003. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) date of maximum medical improvement (MMI) and impairment rating (IR) for the compensable low back injury of _____, are not ripe for adjudication and that the Texas Workers' Compensation Commission (Commission) shall appoint a new designated doctor to evaluate the claimant for the compensable low back injury of _____. The appellant (self-insured) appeals, arguing that the hearing officer erred as a matter of law. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable low back injury on _____, and that Dr. S was appointed designated doctor by the Commission to evaluate the claimant. The record reflects that Dr. S examined the claimant on February 4, 1997, and assigned the claimant an IR of 14% and noted that the claimant reached statutory MMI on August 18, 1996. The claimant testified and the medical records in evidence reflect that subsequent to the examination of Dr. S, the claimant underwent additional surgery. Letters of clarification were sent to Dr. S by the Commission. In a response dated October 24, 2002, Dr. S opined that since the claimant had undergone additional surgery after the date of his statutory MMI, the claimant's IR would now be different. Dr. S further opined that the claimant should be reevaluated to determine his IR following his second surgery. However, Dr. S further explained that she would be unable to reevaluate the claimant because she had moved out of state and no longer practiced medicine in the state of Texas.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that a designated doctor's response to any Commission request for clarification is considered to have presumptive weight as it is part of the designated doctor's opinion. The rule does not provide any time limits, nor does it have any qualifications on it, such as, "for a proper purpose." Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. The self-insured acknowledges in its appeal that neither Rule 130.5 nor 130.6 contain any express time limits for disputing an IR or for a designated doctor to amend an IR. However, the self-insured argues that a reasonable time standard should be applied when the statute and rules have no express time limits. The self-insured argues that in the present case, over four years have passed and the claimant should not be allowed to challenge the initial rating of the designated doctor.

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that the report of a Commission-appointed designated doctor determining the date of MMI and the claimant's IR shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. The hearing officer found that the response letter from Dr. S was not contrary to the great weight of the other medical evidence. However, since Dr. S could not perform the reevaluation, we perceive no error in the determination that a second designated doctor should be appointed.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We do not conclude that the hearing officer improperly applied the law to the facts. His factual determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MANAGER**
**(ADDRESS)**
**(CITY), TEXAS (ZIP CODE)**.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge