

APPEAL NO. 030906
FILED MAY 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 March 20, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 14%, as certified by Dr. B, the third designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The parties stipulated that the claimant reached statutory maximum medical improvement on November 6, 2000. The claimant appealed, essentially requesting that we reverse the hearing officer's determination that her IR is 14% and render a new determination that her IR is 15% in accordance with the report of Dr. W, the second designated doctor. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

Section 408.125 of the 1989 Act provides that a report of a Commission-selected designated doctor is entitled to presumptive weight on the issue of IR, and the Commission shall base its determination on such report, unless the great weight of the other medical evidence is to the contrary. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that responses by designated doctors to requests for clarification from the Commission are considered to have presumptive weight, as they are part of the doctor's opinion. Whether the great weight of the other medical evidence is contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer to resolve. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant essentially argues that the appointment of the third designated doctor was improper. The evidence reflects that the Commission sought clarification of Dr. W's impairment certification on January 29 and March 26, 2002, however, Dr. W did not respond to either correspondence. The evidence sufficiently supports the hearing officer's determination that Dr. W was unable and unwilling to provide written clarification concerning his certification to the Commission, and it was necessary and appropriate for the Commission to appoint Dr. B as the third designated doctor to evaluate the claimant. Cain, *supra*.

We affirm the hearing officer's decision and order.

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

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge