

APPEAL NO. 031402
FILED JULY 16, 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 April 30, 2003. The hearing officer determined that the compensable injury sustained by the respondent (claimant) on _____, includes the diagnosed herniated discs at L4-5 and L5-S1, and that the claimant reached maximum medical improvement (MMI) on July 17, 2001, with a 12% impairment rating (IR). The appellant (carrier) appealed, asserting that the above determinations are against the great weight and preponderance of the evidence. The file does not contain a response from the claimant.

DECISION

We affirm.

Extent of injury is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. Nothing in our review of the record indicates that the hearing officer's extent-of-injury determination is 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). We reject the carrier's assertion that the hearing officer applied an improper standard when reviewing the evidence.

The carrier complains that the hearing officer should not have accorded presumptive weight to the designated doctor's report of July 17, 2001, because the 12% IR included impairment for spinal surgery. The carrier asserts that the surgery was for conditions not related to the compensable injury. However, we have affirmed the hearing officer's determination regarding extent of injury and reject the carrier's contentions in this regard. Sections 408.122 and 408.125 of the 1989 Act provide that a report of a Texas Workers' Compensation Commission (Commission)-selected designated doctor shall have presumptive weight on the issues of MMI and IR, and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. Whether the great weight of the other medical evidence was 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 determinations regarding MMI and the claimant's IR, and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for Reliance National Indemnity Company, an impaired carrier and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
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Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge