

APPEAL NO. 031545
FILED JULY 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 was held on May 29, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 27, 2002, with a 0% impairment rating (IR), in accordance with the Texas Workers' Compensation Commission (Commission)-appointed designated doctor, Dr. S. The claimant appealed the hearing officer's determinations, and requests that this case be remanded for the selection of a second designated doctor. The claimant asserts that: (1) Dr. S's "snide off-hand" response to a letter of clarification was "an insufficient response as a matter of law"; (2) Dr. S did not reexamine the claimant to determine whether knee surgery resulted in a reduction of pain; (3) Dr. S did not review the MRI report that showed chondromalacia; and (4) since the respondent (carrier) did not dispute the claimant's extent of injury, and the carrier has paid for knee surgery, Dr. S was required to provide "an IR and MMI date for the Claimant's chondromalacia that was part of the injury." The carrier responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. Dr. S examined the claimant on August 27, 2002, and determined that he reached MMI on August 27, 2002, with a 0% IR. The claimant contends that he delivered to Dr. S's office a copy of his MRI of the right knee for reconsideration of his IR. The MRI of the right knee dated June 20, 2002, reflects a "mild to moderate degree of patellofemoral chondromalacia," "posteromedial meniscus without definite linear tear" and "intact mensci." The Commission sent Dr. S a request for clarification on December 30, 2002, which asked him to review the MRI report and the operative report of October 22, 2002. Dr. S responded with a hand-written note stating that "8/27/02 DD exam=MMI; IR=ZERO; Dx. Right knee strain, normal exam; MRI: No tear meniscus; EMG, Nerve conduction=unremarkable; thank you—1/20/03 12:45 PM [Signature] What part of normal & MMI date not understood by them." (Emphasis in the original.) It is undisputed that the claimant underwent knee surgery on October 22, 2002.

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). Sections 408.122(c) and 408.125(c) of the 1989 Act provide that a report of a Commission-appointed 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. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification also has presumptive weight. At the

hearing, the claimant made essentially the same arguments that he makes on appeal. The Decision and Order of the hearing officer indicates that he considered those arguments. The hearing officer determined that the claimant's MMI and IR are correct, based upon the certification of Dr. S and the certification was not against the great weight of medical evidence. The findings of fact and conclusion of law that he made are supported by sufficient evidence and 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). There is no indication that the hearing officer did not properly apply the law in rendering his decision.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge