

APPEAL NO. 031815
FILED AUGUST 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 12, 2003. The record closed on May 21, 2003. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of _____, does not include cognitive dysfunction, depressive disorder, anxiety disorder, or other psychiatric conditions; (2) the appellant (claimant) did not have disability as a result of the _____, injury from March 28, 2001, through the date of the CCH; and (3) the claimant's impairment rating (IR) is not ripe for adjudication pending a valid IR by a designated doctor that complies with 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 appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a physics teacher for the employer. It is undisputed that on _____, the claimant sustained a compensable closed head injury when he ran into a lab table and fell backwards hitting his head. The parties stipulated that the claimant had disability from _____, through March 27, 2001. At issue was whether the compensable injury of _____, extends to include cognitive dysfunction, depressive disorder, anxiety disorder, or other psychiatric conditions and whether he had disability from March 28, 2001, through the date of the CCH.

EXTENT-OF-INJURY AND DISABILITY

Extent-of-injury and disability issues are factual questions for the hearing officer to resolve. Conflicting evidence was presented regarding these issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer determined that the claimant did not prove that his injury extended to the other problems alleged and that he did not have disability during the time period claimed. The hearing officer's decision is supported by sufficient evidence and 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, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

IR

It is undisputed that the Texas Workers' Compensations Commission (Commission)-selected designated doctor, Dr. C, certified on August 13, 2002, that the claimant's IR was 25%. The self-insured contended that the claimant's IR as certified by Dr. C was defective and invalid, and requested that the claimant's IR be reevaluated. In determining the claimant's IR, the hearing officer reviewed the evidence and determined that it was necessary to seek clarification from Dr. C regarding the claimant's IR. The evidence reflects that the hearing officer requested clarification from Dr. C in a letter dated March 20, 2003, and Dr. C responded on April 10, 2003, and amended her report to reflect that the claimant's IR is 28%. The hearing officer considered whether Dr. C correctly applied the AMA Guides, reviewed the correct medical history of the claimant, and provided multiple certifications of the IR since the extent-of-injury issue was in dispute.

Section 408.102(e) provides that where there is a dispute as to the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. 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 is also considered to have presumptive weight, as it is part of the designated doctor's opinion. Rule 130.6(d)(5) provides in part that when the extent of the injury may not be agreed upon by the parties, the designated doctor shall provide multiple certifications of maximum medical improvement (MMI) and [IRs] that take into account the various interpretations of the extent of the injury so that when the Commission resolves the dispute, there is already an applicable certification of MMI and rating from which to pay benefits as required by the statute.

Given that the hearing officer determined that the claimant's compensable injury of _____, does not include cognitive dysfunction, depressive disorder, anxiety disorder, or other psychiatric conditions, the hearing officer was unable to make a determination regarding the claimant's IR from Dr. C's report or amended report. The hearing officer commented that Dr. C's response to the request for clarification does not address the "multiple certifications regarding the extent of injury." It is apparent from the evidence that Dr. C only provided multiple certifications for the inclusion of the disputed conditions and that she did not provide a certification for the exclusion of the disputed conditions, thus Dr. C did not take into account the various interpretations of the extent of the injury so that the Commission may resolve the claimant's IR. In the absence of a certification that excludes those conditions found not to be compensable, we cannot conclude that the hearing officer erred in determining that the claimant's IR is not ripe for adjudication and that the IR issue should be returned to the Field Office with instructions that a new designated doctor be selected. In addition, we note that the hearing officer was not persuaded that Dr. C reviewed and considered the medical reports that were attached to the request for clarification in certifying the claimant's IR. The hearing officer commented that "[t]he medical history continues to be grossly inaccurate. Medical records of the Claimant were not reviewed." We perceive no error in the hearing officer's determination.

Finally, the claimant contends that the hearing officer demonstrated bias in reaching his decision and requests reversal on this basis. We find no support in the record for the claimant's contention that the hearing officer was motivated by or in any way demonstrated bias in favor of the self-insured. The mere fact that the hearing officer issued a decision adverse to the claimant does not, in our view, demonstrate bias but is the prerogative of the hearing officer as the sole judge of the weight and credibility of the evidence. Accordingly, we find no basis to reverse the hearing officer's decision.

The hearing officer's decision and order are affirmed.

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

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

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge