APPEAL NO. 032019
FILED SEPTEMBER 10, 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 July 1, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th quarter, April 9 through July 8, 2003. The appellant self-insured (carrier herein) appealed, arguing that there is no medical evidence for the conclusions reached by the designated doctor, who gives a conclusory opinion that the claimant has a total inability to work. The carrier maintains that the claimant had some ability to work during the qualifying period of the 13th quarter and should not be entitled to SIBs for the 13th quarter. The claimant responded, urging affirmance and arguing that sufficient evidence supports the hearing officer's findings of fact and conclusions of law.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury; that the claimant reached maximum medical improvement with an impairment rating of 15% or greater; that the claimant did not elect to commute any portion of impairment income benefits; and that the 13th quarter qualifying period began December 26, 2002, and ended March 26, 2003. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 130.102 (Rule 130.102). The good faith and direct result criteria of Section 408.142(a) and Rule 130.102(b)(2) are in dispute in the present case. Regarding the "direct result" criterion, the Appeals Panel has consistently stated that an injured employee need not establish that the impairment is the only cause of the unemployment or underemployment but only that it is a cause, and that the direct result requirement is "sufficiently supported by evidence that an injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury." Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. Applying this standard, we find no error in the hearing officer's finding that the claimant's unemployment during the qualifying period was a direct result of her impairment from the compensable injury.

The primary point of dispute in this case is whether the claimant satisfied the good faith criterion. The claimant contended that she had no ability to work as a result of her compensable injury during the qualifying period for the 13th quarter. We note that this case involves the interpretation and application of Section 408.151 and Rule 130.110. Section 408.151(b) provides:

> If a dispute exists as to whether the employee's medical condition has improved sufficiently to allow the employee to return to work, the [Texas

> Workers' Compensation Commission (Commission)] shall direct the employee to be examined by a designated doctor chosen by the commission. The designated doctor shall report to the commission. The report of the designated doctor has presumptive weight, and the commission shall base its determination of whether the employee's medical condition has improved sufficiently to allow the employee to return to work on that report unless the great weight of the other medical evidence is to the contrary.

In addition, Rule 130.110(a) provides, in pertinent part, as follows:

> The report of the designated doctor shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. The presumptive weight afforded the designated doctor's report shall begin the date the report is received by the commission and shall continue: (1) until proven otherwise by the great weight of the other medical evidence; or (2) until the designated doctor amends his/her report based on newly provided medical or physical evidence.

A designated doctor was appointed in this case pursuant to Section 408.151 and he issued his opinion on December 3, 2002, which was date stamped as received by the Commission on December 20, 2002, that the claimant is not capable of returning to work. In a subsequent letter dated January 17, 2003, which was date stamped as received by the Commission on January 22, 2003, the designated doctor reviewed additional information sent to him and stated that his opinion regarding the claimant's ability return to work has not changed and he is still of the opinion that the claimant is not capable of returning to work in any capacity. In the instant case, the hearing officer gave presumptive weight to the designated doctor's report, as required by Rule 130.110(b), and determined that the report was not contrary to the great weight of the other medical evidence. This was a factual call for the hearing officer to make, and his determination on the issue is not against the great weight and preponderance of the evidence. Use of the designated doctor for return-to-work determinations gives presumptive weight to the designated doctor's opinion over other evidence normally used to decide the Rule 130.102(d)(4) issues of inability to work, narrative report, and "other records." Texas Workers' Compensation Commission Appeal No. 022604-s, decided November 25, 2002.

We do not find error in the hearing officer's giving presumptive weight to the designated doctor. Nor do we find error in the hearing officer's finding that the great weight of the other medical evidence was not contrary to the report of the designated doctor. Whether or not the great weight is contrary to the report of a designated doctor is a question of fact. 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 the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508

S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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 (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

JG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge