

APPEAL NO. 032905  
FILED DECEMBER 30, 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 initially convened on July 2, 2003, but was continued until September 24, 2003, at which time the claimant failed to appear. The hearing officer subsequently mailed a "show cause" letter to the claimant, requesting that he contact the Texas Workers' Compensation Commission (Commission). The claimant apparently telephoned the Commission in response to the letter and expressed that he no longer desired to pursue the claim, but the claimant was not willing to provide a written document to that effect. The hearing record was closed on October 8, 2003. The hearing officer determined that in accordance with the opinion of the Commission-selected designated doctor, Dr. Ag, the respondent (claimant) reached maximum medical improvement (MMI) on April 25, 2002, with a 15% impairment rating (IR). The hearing officer additionally determined that the first certification of MMI/IR assigned by Dr. L did not become final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.5(e) (Rule 130.5(e)). The appellant (carrier) appeals the IR determination only. The appeal file contains no response from the claimant. The determinations relating to MMI and the finality of the first MMI/IR certification have not been appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed.

Sections 408.122(c) and 408.125(e) provide that where there is a dispute as to the date of MMI and 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. 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. See *also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

The carrier argues that the hearing officer erred as a matter of law in adopting the IR of Dr. Ag because after receiving the Commission's letter of clarification, wherein

the Commission included a copy of the IR assigned by Dr. Ar, the required medical examination doctor, Dr. Ag “recognized a potential error/problem with his [IR] and specifically stated that another examination would be necessary to address the issue.” We cannot agree with the carrier’s interpretation of Dr. Ag’s letter of clarification. Dr. Ag stated in his letter that he would be willing to reexamine the claimant if requested by the Commission, but that absent an additional examination, his IR opinion remained unchanged. We do not perceive Dr. Ag’s willingness to reexamine the claimant as a request to do so, as asserted by the carrier.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers’ Compensation Commission Appeal No. 93459, decided July 15, 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 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). When reviewing a hearing officer’s decision for factual sufficiency of the evidence we should reverse such decision only if it is 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 this case, we are satisfied that the hearing officer’s IR determination is sufficiently supported by the evidence. Accordingly, we cannot agree that the hearing officer erred in determining that the claimant’s IR is 15% in accordance with the opinion of Dr. Ag.

The decision and order of the hearing officer are affirmed.

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

**ROBIN MOUNTAIN  
ACE USA  
6600 CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Margaret L. Turner  
Appeals Judge