

APPEAL NO. 033058
FILED JANUARY 8, 2004

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 October 25, 2003, with the record closing on October 26, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 10, 2000, with an 8% impairment rating (IR), as certified by Dr. O, the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appeals these determinations, asserting that he reached MMI statutorily, with either a 29% or an 11% IR, as certified by Dr. I and Dr. M, respectively.

DECISION

Affirmed.

Sections 408.122(c) and 408.125(e) provide that for injuries occurring prior to June 17, 2001, 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. 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. 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.

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 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. 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). The hearing officer noted that although Dr. O was initially

instructed to assess IR only and was supplied the MMI date, he subsequently confirmed in his letter of clarification that given the medical evidence, he believed that August 20, 2000, was the accurate MMI date and explained why the claimant's correct IR is 8%. Contrary to the claimant's assertion on appeal that Dr. O refused to reexamine the claimant, Dr. O actually expressed that he "would be happy to [reexamine] the claimant" if requested. While the claimant asserts that depression and pain should be included in his IR, the evidence indicates that this argument is being made for the first time on appeal. Nothing in our review of the record indicates that the hearing officer's MMI and IR determinations are 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).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & 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
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge