APPEAL NO. 033126
FILED JANUARY 21, 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 November 4, 2003. The hearing officer resolved the issue before him by concluding that the respondent's (claimant herein) impairment rating (IR) was 20%. In doing so, the hearing officer found that the IR of the designated doctor selected by the Texas Workers' Compensation Commission (Commission) was against the great weight of the medical evidence and adopted the second IR of one of the claimant's treating doctors after correcting it for a mathematical calculation error. The appellant (self-insured herein) appeals, arguing that the hearing officer should have adopted the 14% IR of the designated doctor as there was no medical evidence that the range of motion (ROM) measurements on which this IR was based were made without the benefit of a goniometer. The self-insured also argues that the hearing officer did not have the authority to correct the mathematical calculation error in a treating doctor's certification of IR. There is no response from the claimant to the self-insured's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that the claimant sustained a compensable injury on _____, while working for the self-insured. The claimant testified that this injury took place when he was working on a sewer line. The claimant's left foot became stuck in mud, and his foot popped as it twisted. The claimant eventually required surgery on his left foot, and while it was in a cast after surgery, he developed a blood clot causing residual vascular disease. The report of the benefit review conference (BRC) reflects that the parties agreed at the BRC that the claimant attained statutory maximum medical improvement (MMI) on July 16, 2001.

There are several certifications of IR in evidence. Dr. B, a treating doctor, certified on a Report of Medical Evaluation (TWCC-69) dated May 3, 2001, that the claimant attained MMI on May 3, 2001, with a 20% IR. Dr. L, the designated doctor selected by the Commission, certified on a TWCC-69 dated July 27, 2001, that the claimant attained MMI on July 16, 2001, with a 14% IR. Dr. S, a treating doctor, certified on a TWCC-69 dated June 10, 2002, that the claimant attained MMI on July 16, 2001, with a 20% IR. Dr. S certified on a TWCC-69 dated July 2, 2003, that the claimant attained MMI on July 16, 2001, with a 19% IR.

One of the primary differences between the IR assessed by Dr. L and those of Drs. B and S was different values for loss of ROM. It was undisputed ROM testing, upon which Dr. L's IR was based, was performed by Dr. G to whom Dr. L had sent the

claimant to assist him in assessing the claimant's IR. The claimant testified that Dr. G did not use a goniometer when measuring his ROM. It is undisputed that the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), require the use of goniometer for these measurements.

The self-insured argues that there is no medical evidence that Dr. G did not use a goniometer when measuring the claimant's ROM. The self-insured challenges the hearing officer's factual finding that Dr. G's examination of the claimant was not conducted in accordance with the AMA Guides as not being sufficiently supported by the evidence. However, the hearing officer's factual finding is not based solely on lay testimony. The hearing officer sets out the values for all ROM measurements performed on the claimant-the one by Dr. G, the one by Dr. B, and the two by Dr. S. The hearing officer notes that the ROM measurements on all of these examinations except Dr. G's are very similar and the measurements by Dr. G are very dissimilar to the other three. This provides a basis in the medical evidence for the hearing officer's factual finding.

Even more significantly, the hearing officer's decision is not based entirely on the one factual finding challenged by the self-insured. The hearing officer also finds as a matter of fact that Dr. L's IR is against the great weight and preponderance of the evidence. Section 408.125(e) provides that if the IR of the designated doctor is contrary to the great weight and preponderance of the evidence that the IR of another doctor may be adopted. 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

While ever mindful of the deference to be given to the report of the designated doctor, under the facts of this case, the hearing officer has explained his reasons in finding that the IR certification of the designated doctor was contrary to the great weight of the other medical evidence and we cannot say that the hearing officer's factual finding to this effect is contrary to the great weight and preponderance of the medical evidence.

Finally, we find no merit to the self-insured's argument that the hearing officer was without authority to correct a computational error in Dr. S's second certification of IR while basing his resolution of the IR on this certification. We have held in a number of cases that the hearing officer is authorized to correct computational errors. We note that the self-insured does not argue that Dr. S's second certification did not include a

mathematical calculation error or that the hearing officer made an incorrect computation when correcting this IR from 19% to 20%.

The decision and order of the hearing officer are affirmed.

The self-insured states that 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

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

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge