

APPEAL NO. 033285
FILED FEBRUARY 9, 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 (CCH) was held on October 23, 2003. The hearing officer decided that the appellant (claimant herein) attained maximum medical improvement (MMI) on August 22, 2002, with a five percent impairment rating (IR) based upon the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals, contending that the designated doctor prematurely certified MMI because further surgery was required and that the IR did not reflect impairment due to this surgery. The respondent (carrier herein) replies the hearing officer did not err in giving presumptive weight to the report of the designated doctor.

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.

It was undisputed that the claimant injured his neck and shoulder at work while moving wall panels on _____. The claimant was eventually diagnosed with a rotator cuff tear and underwent surgery to repair it in April 2002. Dr. M, the Commission-selected designated doctor, certified that the claimant attained MMI on August 22, 2002, with a five percent IR. The claimant continued with medical treatment and had a second rotator cuff repair surgery in July 2003. The Commission sent Dr. M a letter of clarification asking whether the additional treatment that the claimant had received would cause Dr. M to change his certification. Dr. M replied that his opinion as to MMI and IR remained unchanged.

Sections 408.122(c) and 408.125(c) provide that the report of the designated doctor has presumptive weight, and the Commission shall base its determination of whether the employee has reached MMI and the IR on the report unless the great weight of the other medical evidence is to the contrary. The hearing officer found that the designated doctor's certification of MMI and IR is not contrary to the great weight of the other medical evidence. Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. 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).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge