

APPEAL NO. 040117
FILED FEBRUARY 27, 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 December 17, 2003. The hearing officer determined that: (1) the compensable injury of _____, does not include impotence (erectile dysfunction); and (2) the appellant (claimant) has a 14% impairment rating (IR), as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant appeals these determinations essentially on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

EXTENT OF INJURY

The hearing officer did not err in determining that the compensable injury of _____, does not include impotence (erectile dysfunction). This determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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).

IMPAIRMENT RATING

The hearing officer did not err in determining that the claimant has a 14% IR, as certified by the Commission-appointed designated doctor. The claimant asserts that the designated doctor's IR certification is contrary to the great weight of the other medical evidence because it does not include a rating for loss of range of motion (ROM). More specifically, the claimant asserts that the designated doctor's report is incorrect because the designated doctor improperly invalidated the claimant's lumbar ROM. In his report, the designated doctor states, as a basis for invalidating ROM, that the claimant refused to move more than five degrees during testing and that the claimant's observed ROM, when distracted, was greater than the measured value. We have held that a designated doctor may invalidate ROM, as in this case, based on observations of suboptimal effort on the part of the claimant during testing. Texas Workers' Compensation Commission Appeal No. 021200, decided June 26, 2002. The hearing officer found that the other medical evidence did not overcome the presumptive weight afforded to the designated doctor's report. In view of the evidence presented, we cannot conclude that the hearing

officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Next, the claimant appears to argue that the designated doctor's report should not have been considered because the designated doctor failed to respond to a request for clarification from the Commission. Nothing in our review of the record indicates that the designated doctor failed to properly respond to a Commission request for clarification. Accordingly, we decline to reverse the hearing officer's decision on this basis.

Finally, the claimant requests reversal because the IR does not include a rating for erectile dysfunction. Given our affirmance of the hearing officer's determination that the compensable injury does not include erectile dysfunction, we likewise affirm the hearing officer's IR determination.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge