

APPEAL NO. 040318  
FILED APRIL 1, 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 15, 2003, and January 7, 2004. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not include a psychiatric condition; that the claimant's impairment rating (IR) is 5% as initially reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission); and that the Commission did not abuse its discretion in appointing the designated doctor as the designated doctor. The claimant appeals the hearing officer's determinations that his compensable injury does not include a psychiatric condition and that his IR is 5%, contending that the hearing officer's determinations on those issues are against the great weight and preponderance of the evidence. The respondent (carrier) asserts that sufficient evidence supports the hearing officer's determinations on the appealed issues. There is no appeal of the hearing officer's determination that the Commission did not abuse its discretion in appointing the designated doctor as the designated doctor.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable back injury on \_\_\_\_\_. Conflicting evidence was presented with regard to the issue of whether the compensable injury includes a psychiatric condition. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determination that the compensable injury does not include a psychiatric condition 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 (Tex. 1986).

The parties stipulated that the claimant reached maximum medical improvement (MMI) on May 14, 2002, as was certified by the designated doctor in both his initial report and amended report. Section 408.125(e) provides that the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. 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 Commission request for clarification is considered to have presumptive weight as it is part of the designated doctor's report. While the designated doctor's opinion has presumptive weight with regard to the IR, his opinion as to the extent of the compensable injury does not have presumptive weight. Texas Workers' Compensation Commission Appeal No. 93290, decided June 1, 1993,

and Texas Workers' Compensation Commission Appeal No. 94311, decided May 2, 1994.

In the instant case, the designated doctor initially examined the claimant on May 14, 2002, and certified that the claimant was at MMI and assessed a 5% IR under Diagnosis-Related Estimate (DRE) Thoracolumbar Category II of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). After the Commission sent several letters to the designated doctor at the request of the claimant, the designated doctor reexamined the claimant on March 25, 2003, and assessed a 15% IR, consisting of 5% impairment under DRE Category II and 10% impairment for mental and behavioral disorders. As noted, the hearing officer determined that the compensable injury does not include a psychiatric condition and we are affirming that determination. Section 401.011(24) provides that IR means the percentage of permanent impairment of the whole body resulting from a compensable injury. Since the claimed psychiatric condition is not part of the compensable injury, it should not be assigned any impairment, and the hearing officer did not err in adopting the designated doctor's initial certification of a 5% IR for the back injury. See Texas Workers' Compensation Commission Appeal No. 941732, decided January 31, 1995. We conclude that the hearing officer's determination that the claimant's IR for the compensable injury is 5% 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, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 720, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge