

APPEAL NO. 040473
FILED APRIL 15, 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 January 23, 2004. The hearing officer determined that: (1) the appellant's (claimant) compensable right knee injury of _____, does not extend to include complex regional pain syndrome (CRPS) Type I (reflex sympathetic dystrophy (RSD)); (2) the claimant reached maximum medical improvement (MMI) on June 26, 2002; (3) the claimant has a zero percent impairment rating (IR); and (4) the claimant had disability from June 26, 2002, through the date of the CCH, but is not entitled to temporary income benefits for this period because he reached MMI on June 26, 2002. The claimant appealed the hearing officer's extent-of-injury, MMI, and IR determinations based on sufficiency of the evidence. Additionally, the claimant asserts that the designated doctor's report was biased in that he did not consider all the injuries/condition in determining IR, that the hearing officer did not give presumptive weight to the designated doctor's clarification, and that the hearing officer did not consider whether the claimant's compensable injury extends to include a psychological condition. The respondent (carrier) responded, urging affirmance. The hearing officer's disability determination was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

EXTENT OF INJURY

The parties stipulated that the claimant sustained a compensable right knee injury on _____. The extent-of-injury issue at the CCH was limited to whether the compensable injury of _____, extends to include CRPS Type I RSD. The 1989 Act specifically limits the issues before the hearing officer to those raised at the benefit review conference (BRC), consented to by the parties, or if not raised at the BRC, a good cause determination was found for not raising the issue at the BRC. Section 410.151. In the instant case, neither party requested to add an issue regarding whether the compensable injury of _____, extends to include a psychological condition. We perceive no error.

We have reviewed the complained-of determination regarding extent of injury and conclude that the issue involved a fact question for the hearing officer to resolve. There was conflicting medical evidence in the record. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's extent-of-injury determination is not 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, 176 (Tex. 1986).

MMI/IR

Sections 408.122(c) and 408.125(c) of the 1989 Act provide that a report of a Texas Workers' Compensation Commission (Commission)-appointed designated doctor shall have presumptive weight on the issues of MMI and IR, and the Commission shall base its determination on such 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 request for clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. The evidence reflects that Dr. B, the designated doctor, examined the claimant on June 26, 2002. Dr. B certified that the claimant reached MMI on June 26, 2002, and assessed the compensable right knee injury with a zero percent IR. In a letter of clarification dated May 28, 2003, Dr. B opined that if the Commission determined that the claimant's diagnosis of CRPS Type I RSD is a compensable injury, he would "retract the date of [MMI]" and he would recommend "further pain management treatment." Given that the hearing officer found that the claimant's compensable injury of _____, does not extend to include CRPS Type I RSD, the hearing officer could conclude that the designated doctor's report of June 26, 2002, that rates the compensable right knee injury had presumptive weight. The hearing officer commented that the designated doctor found that the claimant "reached [MMI] on June 26, 2002, the date of his examination, and assigned a zero percent [IR]. This [IR] was based solely on the knee injury." Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. The hearing officer reviewed the record and decided what facts were established. He determined that the great weight of medical evidence was not contrary to the designated doctor's report. We conclude that the hearing officer's determinations regarding MMI and IR are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge