APPEAL NO. 040689
FILED MAY 18, 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 January 12, 2004, continued until March 1, 2004. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in failing to appoint a second designated doctor to evaluate the respondent (claimant), and that the claimant reached maximum medical improvement (MMI) on July 3, 2003, with a 43% impairment rating (IR) as certified by the Commission-appointed designated doctor in his amended report. The appellant (carrier) appealed, asserting that the Commission abused its discretion in failing to appoint a second designated doctor because the designated doctor failed to timely respond to a letter of clarification as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), the designated doctor failed to properly apply 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) (AMA Guides), and because the claimant had unilateral contact with the designated doctor's staff. The carrier additionally asserts that the designated doctor's certification of a 43% IR is against the great weight of the other medical evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The carrier asserts that the Commission abused its discretion in failing to appoint a second designated doctor to evaluate the claimant in this case. The carrier asserts that the appointment of a new designated doctor is necessary because the current designated doctor failed to timely respond to a letter of clarification pursuant to Rule 130.6(i), his certification was not made in accordance with the AMA Guides, and the claimant had an unauthorized unilateral contact with the designated doctor which resulted in prejudice against the carrier. After reviewing the evidence, the hearing officer determined that the appointment of a second designated doctor was not necessary because there is no mandatory requirement under Rule 130.6(i) that the Commission must appoint a second designated doctor where the first designated doctor is dilatory in timely responding to a request for clarification. The hearing officer further determined that the carrier failed to prove that the claimant had unilateral contact with the designated doctor. As to the carrier's assertion that the designated doctor failed to properly utilize the AMA Guides, the evidence was in conflict. A carrier peer review doctor appears to support that contention, however, a carrier required medical evaluation doctor does not. In view of the conflicting evidence on this issue, and because the issue presented a question of fact for the hearing officer, we cannot say that the hearing officer erred in determining that the Commission did not abuse its discretion by failing to appoint a second designated doctor. We find that the hearing

officer properly pointed out that there is no mandatory provision in Rule 130.6(i) for the appointment of a second designated doctor where the first designated doctor does not timely respond to a Commission letter of clarification. It would appear that such an issue would fall within the realm of a possible administrative violation, and not an issue for the Appeals Panel. As far as the assertion that the claimant had unilateral contact with the designated doctor, the claimant testified that he merely went to the designated doctor's office and delivered the carrier's letter to the administrative staff. The claimant testified that he did not speak to the designated doctor, nor did he ask to speak to him. The hearing officer accepted this testimony and determined there was no unilateral contact. We perceive no error in this determination.

Sections 408.122(c) and 408.125(c) provide that where there is a dispute as to the date of MMI and the IR, the report of the designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. 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 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing officer's decision is 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 **CASUALTY RECIPROCAL EXCHANGE** and the name and address of its registered agent for service of process is

FRED S. STRADLEY
9330 LYNDON B. JOHNSON FREEWAY
SUITE 1400, ABRAMS CENTER
DALLAS, TEXAS 75243-4355.

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Daniel R. Barry
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Chris Cowan
Appeals Judge