APPEAL NO. 040702
FILED MAY 10, 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 February 20, 2004. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on July 1, 2002, and that the claimant did not have disability from July 1, 2002, through March 11, 2003. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed, as reformed.

The claimant asserts that the hearing officer's Finding of Fact No. 6 contains a typographical error in which he refers to "July 1, 2003," rather than "July 1, 2002," for the period of disability claimed. We reform Finding of Fact No. 6 to conform to Conclusion of Law No. 3 and the evidence presented at the CCH. Finding of Fact No. 6 is reformed to read that the claimant's inability to obtain and retain employment at wages equivalent to his preinjury wages from July 1, 2002, through March 11, 2003, is not because of the compensable injury.

The claimant attaches several documents to his appeal; of those, only one document, dated October 10, 2002, was offered and admitted at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. We conclude that these attachments to the claimant's appeal do not meet the requirements of newly discovered evidence necessary to warrant a remand. Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. *See* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in determining that the claimant's MMI date is July 1, 2002. It is undisputed that the claimant sustained a compensable injury on _____. Sections 408.122(c) and 408.125(c) provide that for a claim for workers' compensation benefits based on a compensable injury that occurs on or after June 17, 2001, the report of the designated doctor has presumptive weight, and the Texas Workers' Compensation Commission (Commission) shall base its determination of whether the employee has reached MMI and the impairment rating (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. We note that although the claimant's IR is not in dispute, Rule 130.1(c)(3) provides that the "assignment of an [IR] for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination." The evidence reflects that the designated doctor examined the claimant on July 1, 2002, and he certified that the claimant reached MMI on the same date with a five percent IR. The designated doctor reexamined the claimant on August 4, 2003, after the claimant completed the PRIDE program (a pain management program), and he opined that he stood by his prior certification of MMI and IR. The claimant argued that his date of MMI is March 11, 2003, with a five percent IR as certified by Dr. M. 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. The hearing officer found that the great weight of the medical evidence is not contrary to the findings of the designated doctor, and concluded that the claimant's correct date of MMI is July 1, 2002. Nothing in our review of the record indicates that the hearing officer's MMI determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer did not err in determining that the claimant did not have disability. The hearing officer found that the claimant's inability to obtain and retain employment at wages equivalent to his preinjury wage from July 1, 2002, through March 11, 2003, was not because of the claimant's compensable injury, and concluded that the claimant did not have disability, as defined by Section 401.011(16). We conclude that the hearing officer's disability determination 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, as reformed.

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.

_____
Veronica L. Ruberto
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge