

APPEAL NO. 040760
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 was held on March 3, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th quarter. The claimant appeals this determination. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.151(b) of the 1989 Act provides that if a dispute exists as to whether a claimant has improved sufficiently to return to work, the Texas Workers' Compensation Commission (Commission) may appoint a designated doctor to evaluate the claimant. The designated doctor's report is given presumptive weight absent a great weight of evidence to the contrary. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.110 (Rule 130.110) implements Section 408.151 and provides, in pertinent part:

- (a) This section only applies to disputes regarding whether an injured employee whose medical condition prevented the injured employee from returning to work in the prior year has improved sufficiently to allow the injured employee to return to work on or after the second anniversary of the injured employee's initial entitlement to [SIBs]. Upon request by the injured employee or insurance carrier, or upon its own motion, the Commission shall appoint a designated doctor to resolve the dispute. The report of the designated doctor shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. The presumptive weight afforded the designated doctor's report shall begin the date the report is received by the Commission and shall continue:
 - (1) until proven otherwise by the great weight of the other medical evidence; or
 - (2) until the designated doctor amends his/her report based on newly provided medical or physical evidence.

Use of the designated doctor for return to work determinations gives presumptive weight to the designated doctor's opinion over other evidence normally used to decide the Rule 130.102(d)(4) issues of inability to work, narrative report, and "other records." Texas Workers' Compensation Commission Appeal No. 022604-s, decided November 25, 2002.

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. 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 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, 702 (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). The hearing officer found that the designated doctor's opinion that the claimant had an ability to work during the 11th quarter qualifying period was entitled to presumptive weight and, consequently, the claimant is not entitled to 11th quarter SIBs. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge