APPEAL NO. 040881
FILED JUNE 7, 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 April 5, 2004. The hearing officer determined that the designated doctor's certification that the respondent's (claimant herein) impairment rating (IR) was 10% was contrary to the great weight of the other medical evidence. The hearing officer ordered the appointment of a second designated doctor. The appellant (carrier herein) files a request for review, arguing that the hearing officer should have given presumptive weight to the IR certification of the designated doctor. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that a report of a designated doctor selected by Texas Workers' Compensation Commission (Commission) shall have presumptive weight on the issues of maximum medical improvement and IR and the Commission shall base its determination on such report unless the great weight of other medical evidence is to the contrary. 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 is basically a factual determination. 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, 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 trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.);

Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, the hearing officer detailed his reasoning for not giving presumptive weight to the designated doctor's report. Essentially, his reason was that the designated doctor did not follow the protocols 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) (AMA Guides) in arriving at his rating.[1] The hearing officer also stated that the designated doctor's curt replies to requests for clarification showed that "he is not disposed to an impartial evaluation." The carrier points out that the designated doctor's methodology in at arriving his IR is supported by a letter from Dr. T, apparently a carrier-selected peer reviewer. There is clearly conflicting evidence as to whether or not the designated doctor properly followed the protocols of the AMA Guides in this case. Applying the above standard of review, we find no basis to reverse the hearing officer's determination that the designated doctor failed to properly apply the protocols of the AMA Guides or his factual finding that the great weight of the medical evidence is contrary to the designated doctor's IR assessment. Nor do we find error in the hearing officer's ordering the appointment of a second designated doctor. We would note that in determining the claimant's IR a second designated doctor should consider the effect of Commission Advisory 2003-10, effective July 22, 2003.

[1] Section 408.124 requires that an IR be determined using the AMA Guides.

The decision and order of the hearing officer are affirmed.

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 750, COMMODORE 1
AUSTIN, TEXAS 78701.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Daniel R. Barry
Appeals Judge

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Edward Vilano
Appeals Judge