

APPEAL NO. 041157
FILED JUNE 30, 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 20, 2004. The hearing officer resolved the disputed issue by deciding that the respondent (carrier) is entitled to a reduction of the appellant's (claimant) impairment income benefits (IIBs) based on contribution from an earlier compensable injury, and the percentage of contribution is 26%. The claimant appealed, disputing the determination. The carrier responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant had a prior compensable workers' compensation injury on _____, to her lower back for which she received a 5% impairment rating (IR) reaching maximum medical improvement (MMI) on November 5, 2001. Additionally, the parties stipulated that on November 21, 2001, the claimant sustained a compensable injury to her neck and low back for which she received a 19% IR reaching MMI on May 8, 2003. The IR for the November 21, 2001, injury, calculated using 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) consisted of a 15% rating based on Diagnosis-Related Estimate (DRE) Cervicothoracic Category III and a 5% rating based on DRE Lumbosacral Category II, combined for a total IR of 19%.

Whether there is a cumulative impact, and, if so, the amount of such cumulative impact, is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94578, decided June 22, 1994. It is well-settled that "[s]imply proving the occurrence of a previous compensable injury will not sustain the carrier's burden to prove the interaction of that injury with the current one on the present impairment." Texas Workers' Compensation Commission Appeal No. 971348, decided August 28, 1997. The consideration of the cumulative impact from prior injuries requires an assessment not only of the impairment from previous injuries, but also an analysis of how the injuries work together. Texas Workers' Compensation Commission Appeal No. 950268, decided April 10, 1995. This analysis includes considering the IRs from the prior compensable injuries and the present injury, and the components of the IRs. See Texas Workers' Compensation Commission Appeal No. 950735, decided June 22, 1995; Texas Workers' Compensation Commission Appeal No. 951019 decided August 4, 1995.

The carrier had the burden of proof on the contribution issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v.

Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). Having reviewed the record, we are satisfied that the challenged determinations of the hearing officer regarding the contribution issue are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the hearing officer's determination that the carrier is entitled to a reduction of the claimant's IIBs based on contribution from an earlier compensable injury, and that the percentage of contribution is 26%, is affirmed.

We affirm the decision and order of the hearing officer.

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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge