

APPEAL NO. 041206  
FILED JULY 13, 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 15, 2004. The hearing officer decided that: (1) the respondent's (claimant) compensable injury of \_\_\_\_\_, includes a fracture to a long portion of the claimant's femoral bone; (2) the claimant had disability during July 7 through August 14, 2002; (3) the claimant reached maximum medical improvement (MMI) on August 14, 2002, with an 18% impairment rating (IR); and (4) the claimant is entitled to supplemental income benefits (SIBs) for the first, second, and third quarters. The appellant (carrier) appealed all of the hearing officer's determinations based on sufficiency of the evidence grounds. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

**EXTENT OF INJURY AND DISABILITY**

The parties stipulated that the claimant sustained a compensable injury in the form of a broken bone in his left leg on \_\_\_\_\_. At issue was whether the claimant's compensable injury extended to include a fracture to the long portion of the claimant's femoral bone, and whether the claimant had disability from July 7 through August 14, 2002. These issues presented questions of fact for the hearing officer to resolve. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. In the instant case, the hearing officer was persuaded by the evidence that the claimant had a "subtrochanteric fracture of the proximal femur" and that the claimant had disability for the period claimed. In view of the evidence presented the hearing officer found that the compensable injury of \_\_\_\_\_, extended to include a fracture to the long portion of the claimant's femoral bone, and that the claimant had disability from July 7 through August 14, 2002. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the extent-of-injury and disability determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

**MMI AND IR**

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, and that Dr. G is the Texas Workers' Compensation Commission

(Commission)-appointed designated doctor. For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, Sections 408.122(c) and 408.125(e) provide that the designated doctor's report has presumptive weight, and the Commission shall base its determinations of MMI and 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. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*. In this case, the hearing officer reviewed the designated doctor's report and his response to the Commission's request for clarification and determined that Dr. G's certification that the claimant reached MMI on August 14, 2002, with an 18% IR was not contrary to the great weight of other medical evidence. We are satisfied that the hearing officer's MMI and IR determinations are sufficiently supported by the evidence.

### **SIBS**

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criteria in dispute are whether during the qualifying periods for the first, second, and third quarters: (1) the claimant earned less than 80% of his average weekly wage as a direct result of the impairment from his compensable injury; and (2) the claimant made a good faith effort to obtain employment commensurate with his ability to work.

With regard to the direct result criterion, the hearing officer found that the claimant's unemployment during the qualifying periods for the first, second, and third quarter was a direct result of his impairment from his compensable injury. See Rule 130.102(c). With regard to the good faith criterion for the qualifying period for the first quarter, the hearing officer found that the claimant sought work on a weekly basis pursuant to Rule 130.102(d)(5) and (e), and that during the last week of the qualifying period the claimant returned to work in a position that was relatively equal to his ability to work pursuant to Rule 130.102(d)(1). With regard to the good faith criterion for the qualifying periods for the second and third quarters, the hearing officer found that the claimant sought work on a weekly basis pursuant to Rule 130.102(d)(5) and (e). The hearing officer concluded that the claimant was entitled to SIBs for the first, second, and third quarters, based upon a good faith search for employment and return to work in a position relatively equal to the claimant's ability to work. 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. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order 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 R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Daniel R. Barry  
Appeals Judge