

APPEAL NO. 041208  
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 (claimant) has an impairment rating (IR) of 16% as certified by the second designated doctor appointed by the Texas Workers' Compensation Commission (Commission); and (2) the claimant is not entitled to supplemental income benefits (SIBs) for the first quarter, but the claimant is entitled to second quarter SIBs. The appellant (carrier) appeals, asserting that the Commission abused its discretion by appointing a second designated doctor and that the hearing officer's decision is contrary to the great weight of the evidence. The claimant did not file a response.

DECISION

Affirmed.

**IMPAIRMENT RATING**

We first address the carrier's assertion that the Commission erred by appointing a second designated doctor in this case. We have previously recognized that a second designated doctor may be appointed where the first designated doctor is unavailable to conduct an additional examination. Texas Workers' Compensation Commission Appeal No. 992104, decided November 10, 1999; Texas Workers' Compensation Commission Appeal No. 93852, decided November 4, 1993. In this instance, the hearing officer asked the parties to confirm that "we've established that for whatever reason [the first designated doctor] was not on the computer generated list at the time the carrier requested that [the claimant] be sent back to him after his de-certification of [maximum medical improvement]." The parties agreed, with the carrier stating, "Not on the list that was pulled here and processed in this particular office." Under these circumstances, we cannot conclude that the Commission abused its discretion by appointing a second designated doctor. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in determining that the claimant has a 16% IR, as certified by the second designated doctor. The carrier asserts that the designated doctor's report is contrary to the great weight of the other medical evidence, including the report of the carrier's peer review doctor. Whether the great weight of the other medical evidence is contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We view the contrary medical reports, including the peer review doctor's report, as representing a difference in medical opinion which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. Accordingly, we cannot conclude that the hearing officer's IR determination is so

against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

## SECOND QUARTER SIBS

The hearing officer did not err in determining that the claimant is entitled to second quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue was whether the claimant's unemployment was a direct result of the impairment from the compensable injury and whether he was enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200  
IRVING, TEXAS 75063.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge