

APPEAL NO. 041274
FILED JULY 19, 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 29, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) reached maximum medical improvement (MMI) on December 2, 2002, with a zero percent impairment rating (IR). The claimant appeals these determinations. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Sections 408.122(c) and 408.125(c) provide that for injuries that occurred on or after _____, where there is a dispute as to the date of MMI and the IR, the report of the Texas Workers' Compensation Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. 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 request for clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. See *also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 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 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). 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 this case, we are satisfied that the hearing officer did not err in finding that the designated doctor's report was entitled to presumptive weight and that the claimant reached MMI on December 2, 2002, with a zero percent IR.

In addition to the arguments made at the hearing, which were reasserted by the claimant on appeal, she also argues for the first time on appeal that the designated doctor's report is not entitled to presumptive weight because he was not in possession of an MRI report. As this argument was not made at the hearing, it will not be considered on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AIU INSURANCE 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.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica L. Ruberto
Appeals Judge