

APPEAL NO. 041405
FILED JULY 22, 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 May 17, 2004. The hearing officer determined that the respondent's (claimant herein) impairment rating (IR) was 20% based upon the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The hearing officer also found that the claimant's compensable injury of _____, extends to include depression. The appellant (carrier herein) files a request for review, arguing that these determinations were contrary to the evidence. 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.

Section 408.125(e) of the 1989 Act provides that a report of a designated doctor selected by the Commission shall have presumptive weight on the issue of 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). Applying this standard, we find no error in the hearing officer's giving presumptive weight to the report of the designated doctor and basing his determination of IR on that report.

We next address the extent-of-injury determination. Extent of injury is a factual question for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza, supra. This includes the medical evidence Campos, supra. In this instance, the hearing officer was persuaded that the claimant sustained her burden of proving the causal connection between her compensable injury and depression. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record reveals that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain, supra.

The decision and order of the hearing officer are affirmed.

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

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Margaret L. Turner
Appeals Judge