APPEAL NO. 041744
FILED SEPTEMBER 1, 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 June 3, 2004. The hearing officer determined that: (1) the compensable injury of _____, extends to and includes post concussive syndrome but does not extend to include post-traumatic seizure disorder, C6-7 herniated disc/radiculopathy, L4-5 herniated disc, L3 through S1 radiculopathy, S2 through S4 radiculopathy, and cognitive dysfunction; (2) Dr. R was properly appointed as the designated doctor in accordance with Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5); and (3) the appellant (claimant) has an impairment rating (IR) of two percent, as certified by Dr. R. The claimant appeals these determinations on legal and evidentiary grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

EXTENT OF INJURY

The hearing officer did not err in the complained-of extent-of-injury determination. This determination involved questions of fact for the hearing officer to resolve. 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, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant complains that the hearing officer considered matters not in evidence in reaching his extent-of-injury determination. In his decision and order, the hearing officer states:

> Claimant walked to the witness chair very slowly. Claimant appeared confused, with halting speech and poor memory at the hearing. His demeanor would evoke pity from any trier of fact, unless that trier of fact happened to be unloading his computer from his vehicle located in the parking lot of the (center) when Claimant and his wife arrived at the hearing. The hearing officer observed the Claimant get out of the passenger side of the claimant's vehicle with no difficulty and walking upright. Claimant's wife did drive to the hearing. Claimant used a cane extensively while walking in the courtroom. Claimant did not use the cane when claimant walked around the front of his vehicle. The hearing officer

> heard Claimant address his wife in commanding, clear tones while outside the hearing room.
>
> * * * *
>
> Considering the testimony of the Claimant, his demeanor in and out of the hearing room, the testimony of [carrier's witness], the MRI findings and the medical opinion of Dr. R, I'm persuaded that Claimant's compensable injury of _____, did not result from a fall of 13 feet and was not the producing cause of Claimant's C6-C7 herniated nucleus pulposus/radiculopathy; L4-L5 herniated nucleus pulposus; L3-L4, L4-L5 and L5-S1 radiculopathy; S2-S3 and S3-S4 radiculopathy, cognitive dysfunction or seizure disorder.

We agree that it was error for the hearing officer to consider matters observed "out of the hearing room" and which were not in evidence. The hearing officer's consideration of these matters, however, formed only one of many bases for his decision, as indicated above. Because the hearing officer could determine that the compensable injury did not extend to include the disputed conditions based on the claimant's testimony, the testimony of the carrier's witness, the MRI findings, and the medical opinion of Dr. R, the extent-of-injury determination is not reversible.

APPOINTMENT OF DESIGNATED DOCTOR

The hearing officer did not err in determining that Dr. R was properly appointed as the designated doctor. Under Section 408.0041 and Rule 130.5(d)(2)(C), the Texas Workers' Compensation Commission (Commission) shall appoint a designated doctor who has credentials appropriate to the issue in question and be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and whose scope of practice includes the treatment and procedures performed. In Texas Workers' Compensation Commission Appeal No. 040633-s, decided May 7, 2004, the Appeals Panel held that "scope of practice" is synonymous with a doctor's licensure, citing Commission Advisory 2004-03, dated April 19, 2004. Applying this standard, 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*.

In several points of error, the claimant essentially argues that the Commission exceeded its authority in issuing Advisory 2004-03. Whether the Commission exceeded its authority is a matter for the courts and will not be addressed here. *See* Texas Workers' Compensation Commission Appeal No. 010160, decided March 8, 2001.

IMPAIRMENT RATING

The hearing officer did not err in determining that the claimant has a two percent IR, as certified by Dr. R. The claimant's appeal of the hearing officer's IR determination

is premised upon the success of his appeal with regard to the extent of injury. Given our affirmance of the extent-of-injury determination, we likewise affirm the hearing officer's IR determination.

The decision and order of the hearing officer is affirmed.

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

EDDIE STAFFORD
1417 WEST MAIN, SUITE 104
CARROLLTON, TEXAS 75006.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge