

APPEAL NO. 042029
FILED SEPTEMBER 20, 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 (CCH) was held on July 14, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on December 18, 2003, with a zero percent impairment rating (IR) as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appeals, contending that additional medical records should be sent to the designated doctor and that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (carrier) responds that the hearing officer's decision is not contrary to the great weight and preponderance of the evidence and that the designated doctor addressed the claimant's concerns in a letter of clarification.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The medical records reflect that the claimant injured his back while working on that day. The issues at the CCH were MMI and IR. Sections 408.122(c) and 408.125(c) provide that the MMI and IR report of the designated doctor chosen by the Commission has presumptive weight and the Commission shall base its determination of MMI and IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. The designated doctor examined the claimant on December 18, 2003, and reported that the claimant reached MMI on that day with a zero percent IR. The designated doctor's report reflects that he performed a physical examination of the claimant and reviewed the claimant's medical records, including the report of the lumbar MRI. The designated doctor noted that the claimant had no significant clinical findings and no documented neurological impairment. The treating doctor wrote a letter disagreeing with the designated doctor's report and opining that the claimant is not at MMI. The Commission sent the treating doctor's letter to the designated doctor. The designated doctor responded that he stood by his previous determinations of MMI and IR, noting the normal findings in his previous report of December 18, 2003.

The hearing officer found that the designated doctor's findings are not contrary to the great weight of the other medical evidence and concluded that the claimant reached MMI on December 18, 2003, with a zero percent IR as reported by the designated doctor. At the CCH, the claimant requested that additional medical records, including a report of a discogram, that were created after the designated doctor's examination be sent to the designated doctor for another response. While we agree with the claimant's assertion that the Commission has the authority to request clarification from the

designated doctor, we do not agree that the hearing officer erred in not sending a second clarification request to the designated doctor. The designated doctor explained the basis for his opinion in his original report and in his response to the treating doctor's letter that was sent to him. We do not see that there was anything more for the designated doctor to clarify. The designated doctor's report reflects that he was aware that the claimant has lumbar disc bulges and that he was receiving injections. We conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

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 RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

Robert W. Potts
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge