APPEAL NO. 042130
FILED OCTOBER 4, 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 July 26, 2004. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 7, 2003, with a 10% impairment rating (IR). The claimant appeals on the grounds that the designated doctor's report is legally flawed. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury to his back on _____. The stipulated statutory date for MMI is August 22, 2003. On November 29, 2002, the designated doctor found that the claimant was not at MMI because, in his opinion, the claimant needed further treatment. He stated that two types of surgery had been recommended. On March 7, 2003, the same designated doctor found the claimant at MMI stating, "The clinical condition is stabilized and not likely to improve with surgical intervention or active medical treatment." He added, however, that, in his opinion, the claimant "may need future treatment." He also noted that the claimant "has ruled out having surgery." On October 21, 2003, the same designated doctor submitted a clarification in which he stated that his date of MMI and IR would remain the same unless he received documentation that there would be surgery and that it indicated how it would improve the claimant's condition. There is conflicting evidence in the record as to whether the claimant ever indicated to the designated doctor that he was unwilling to have surgery of any type. The evidence was undisputed that the claimant's treating doctors and the carrier had not reached agreement on which type of surgery was appropriate. On August 23, 2002, an Independent Review Organization had recommended surgery different from that proposed by the claimant's treating doctors. The claimant testified that his treating doctors had advised him that they would not perform surgery because they recommended fusion and it had been refused.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(a)(2) (Rule 130.6(a)(2)) provides that the designated doctor's report is given presumptive weight regarding MMI and IR. Rule 130.6(i) of the same section provides that the designated doctor's response to a request for clarification is considered to have presumptive weight as it is part of the doctor's opinion. The claimant essentially argues that the hearing officer erred because the great weight of the evidence showed that the claimant had not reached MMI because there were surgical procedures available which would improve the claimant's condition. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is 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. 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). We are satisfied that the evidence sufficiently supports the hearing officer's determination that the great weight of the medical evidence is not contrary to the designated doctor's decision that the claimant's correct MMI date is March 7, 2003. Accordingly, no sound basis exists for us to reverse the determination that the claimant's correct MMI date is March 7, 2003. In that we are affirming the hearing officer's decision on MMI we also affirm the determination of a 10% IR.

We affirm the decision and order of the hearing officer.

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

CT CORPORATION SYSTEM
350 NORTH ST PAUL STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Margaret A. Turner
Appeals Judge