

APPEAL NO. 042237  
FILED OCTOBER 26, 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 August 11, 2004. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 13% as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appeals, contending that the IR determination is contrary to the great weight of the other medical evidence and that her IR should be 24% as reported by his treating doctor. The respondent (self-insured) asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, and that he reached maximum medical improvement on December 23, 2003. The claimant made the same arguments on appeal that he asserted to the hearing officer at the CCH. The hearing officer determined that the IR assigned by the designated doctor was not contrary to the great weight of the other medical evidence.

Section 408.125(c) of the 1989 Act provides that for injuries that occur on or after June 17, 2001, the report of a Commission-appointed designated doctor 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. 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. The Appeals Panel has stated that the great weight of the other medical evidence requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including a treating doctor's report, is accorded the special presumptive status; that the designated doctor's report should not be rejected absent a substantial basis for doing so; and that medical evidence, not lay testimony, is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 960817, decided June 6, 1996. We view the report of the claimant's treating doctor as representing a difference in

medical opinion, which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report.

We have reviewed the complained-of determination. Nothing in our review of the record reveals that the challenged 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 it on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is (**a certified self-insured**) and the name and address of its registered agent for service of process is

(NAME)  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE)

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge