APPEAL NO. 042284
FILED NOVEMBER 2, 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 August 9, 2004. The hearing officer determined that: the respondent's (claimant) compensable injury of _____, does extend to and include the diagnosed condition of right foot plantar fascitis; (2) that the claimant had disability from November 6, 2003, through March 11, 2004; (3) that the claimant's maximum medical improvement (MMI) date is March 11, 2004; and (4) that the claimant's impairment rating (IR) is three percent.

The appellant (carrier) appeals the disputed determinations, contending that the claimant's plantar fascitis was not causally related to the compensable injury; that disability after November 6, 2003, was due to the alleged right foot plantar fascitis and that the claimant reached MMI on November 5, 2003, with a zero percent IR as assessed by the first designated doctor. The file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable contusion and sprain/strain injury to his right foot and ankle and a compensable contusion, and sprain/strain right hip injury on _____ (in a fall from a table), that the Texas Workers' Compensation Commission's (Commission) first designated doctor was Dr. F and that the Commission's second designated doctor was Dr. S.

The entire case revolves around whether or not the compensable injury includes the plantar fascitis. The carrier contends that plantar fascitis is an inflammation injury and that an MRI performed 13 days after the date of injury shows a normal plantar fascia. The carrier submits medical journal articles and Dr. F's report to support its position. There was contrary medical evidence from an initial treating doctor, a surgeon, and to some extent Dr. S. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). With the medical evidence in conflict the hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant.

On the issue of disability, the claimant's inability to obtain and retain employment, after November 5, 2003, was due to the plantar fascitis. In that we are affirming the hearing officer's determination that the compensable injury includes the plantar fascitis, we also affirm the hearing officer's determination on disability.

Dr. F, the first designated doctor, examined the claimant on November 5, 2003, for the sprain/strain injury. Dr. F found the claimant at MMI on that date with a zero percent IR. The claimant subsequently had surgery for the plantar fascitis on December 12, 2003. The medical records regarding the surgery were sent to Dr. F for comment on his date of MMI and the IR. Dr. F, in a note dated February 11, 2004, replied that with the updated medical it would be appropriate to schedule a reevaluation. It was undisputed that Dr. F was no longer qualified to serve as a designated doctor in this case, therefore, Dr. S was appointed as the second designated doctor. Dr. S's MMI date of March 11, 2004, and three percent IR included the rating for plantar fascitis. The hearing officer's determination that Dr. S's report had presumptive weight and was not contrary to the great weight of the other medical evidence is supported by the evidence.

We have reviewed the challenged determinations and conclude that the hearing officer's determinations are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

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

LEE. F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Edward Vilano
Appeals Judge