

APPEAL NO. 042288
FILED NOVEMBER 8, 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 12, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on December 15, 2003, and that he has an eight percent impairment rating (IR). The appellant (carrier) appeals, contending that the hearing officer's determination on the IR issue is against the great weight and preponderance of the evidence and requesting that a decision be rendered that the claimant's IR is zero percent as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). No response was received from the claimant. There is no appeal of the hearing officer's determination that the claimant reached MMI on December 15, 2003.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable left foot injury on _____, when a pallet fell on and crushed his left foot resulting in multiple fractures for which he underwent surgery on March 13, 2003. The treating doctor performed the surgery and wrote that surgery was required due to severe displacement and that further surgeries may be required. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. 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 Commission request for clarification is considered to have presumptive weight as it is part of the designated doctor's opinion.

The designated doctor reported that the claimant has a zero percent IR. The treating doctor reported that the claimant has an eight percent IR. The hearing officer considered the medical evidence and determined that the great weight of the other medical evidence is contrary to the designated doctor's zero percent IR and that the great weight of the medical evidence established that the claimant's IR is eight percent as reported by the treating doctor. Whether the great weight of the other medical evidence contradicted the IR assigned by the designated doctor was a question of fact for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and

that it 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 **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Ruberto
Appeals Judge