APPEAL NO. 042339
FILED NOVEMBER 12, 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 resolved the disputed issues by determining that the respondent's (claimant) _____, compensable injury extends to and includes post concussive syndrome, major depression with anxiety, and migraine headaches; that the claimant reached maximum medical improvement (MMI) on February 5, 2004, with a 10% impairment rating (IR); and that the appropriate reduction of the claimant's supplemental income benefits (SIBs) based upon contribution from an earlier compensable injury is 0%. The appellant (carrier) appealed the determinations regarding extent of injury and contribution. The claimant responded, urging affirmance. The hearing officer's determinations regarding MMI and IR have not been appealed and have become final. Section 410.169.

DECISION

Affirmed.

The issue of extent of injury presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The trier of fact may believe all, part, or none of the testimony of any witness, including the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In view of the evidence presented, we cannot conclude that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

A carrier that seeks contribution due to a prior compensable injury has the burden to prove entitlement to, and the amount of, contribution. The carrier need not prove an exact percentage; however, there must be sufficient evidence to determine a contribution percentage that is reasonably supportable. Texas Workers' Compensation Commission Appeal No. 961211, decided August 7, 1996. Section 408.084 provides that the Texas Workers' Compensation Commission (Commission) may order a reduction in impairment income benefits and SIBs "in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries." In determining the reduction in benefits because of contribution of a prior compensable injury, the Commission is to consider the "cumulative impact of the compensable injuries on the employee's overall impairment . . . ." Section 408.084(b).

In Texas Workers' Compensation Commission Appeal No. 941338, decided November 22, 1994, the Appeals Panel reversed the decision of the hearing officer because there was a simple use of impairment assigned under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association without an analysis of the cumulative impact of the prior compensable injury and the latest compensable injury and stated that an analysis of how the injuries worked together and the extent to which the prior injury contributed to the present impairment was required. In Texas Workers' Compensation Commission Appeal No. 960589, decided May 3, 1996, the Appeals Panel stated that it appeared that the logical, appropriate way to assess cumulative impact is to start with the recent impairment and look back to the earliest impairment rather than to start with the earliest impairment and look forward to events that have not yet occurred.

The issue of contribution then becomes a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 941405, decided December 1, 1994. A determination of contribution must be based on medical evidence, but the existence of medical evidence supporting contribution does not require an award of contribution. Texas Workers' Compensation Commission Appeal No. 941170, decided October 17, 1994. Likewise, the mere existence of a prior compensable injury is insufficient to establish entitlement to contribution. Texas Workers' Compensation Commission Appeal No. 031237, decided June 24, 2003. In the instant case, the hearing officer correctly stated that the carrier failed to provide a report from a doctor that compares the medical effects of the two injuries. In short, the carrier failed to provide a cumulative impact analysis and therefore did not sustain its burden of proof. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). Having reviewed the record, we are satisfied that the challenged determinations of the hearing officer regarding the contribution issue are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain, *supra.*

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge