

APPEAL NO. 050710
FILED MAY 3, 2005

This appeal after remand 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 September 2, 2004. The hearing officer decided that the compensable injury of _____, does not extend to include an injury to the lumbar spine consisting of a disc herniation at L4-5 or L5-S1; that the appellant (claimant) has not had disability resulting from the compensable injury sustained on _____; and that the issues of the date of maximum medical improvement (MMI) and impairment rating (IR) are not ripe for adjudication. The claimant appealed, disputing the determinations regarding extent of injury, disability, MMI and IR. In Texas Workers' Compensation Commission Appeal No. 042660, decided November 24, 2004, the hearing officer's determinations regarding extent of injury and disability were affirmed and the issues of MMI and IR were remanded back to the hearing officer for further development of the evidence. A hearing on remand was held in (City), Texas, on December 21, 2004, and reconvened on March 1, 2005, with the record closing on March 1, 2005, with (hearing officer) again presiding as the hearing officer. The hearing officer determined that the claimant's date of MMI is May 2, 2003, with a 5% IR, as certified by (Dr. A), the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appealed, disputing the MMI/IR determinations. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. In the CCH held on September 2, 2004, the hearing officer determined that the compensable injury does not extend to include an injury to the lumbar spine consisting of a disc herniation at L4-5 or L5-S1 and that determination was affirmed in Appeal No. 042660, *supra*. The hearing officer sent a letter to Dr. A, dated January 6, 2005, requesting that he certify the date of MMI and assess an IR based on the compensable injury only. Dr. A responded to the letter of clarification and issued an amended Report of Medical Evaluation (TWCC-69) which certified that the claimant reached MMI on May 2, 2003, with a 5% IR. The claimant appealed, contending that the MMI/IR determinations of the hearing officer are against the great weight of the evidence. The claimant contends that the overwhelming preponderance of the evidence establishes that the claimant's compensable injury extends to and includes lumbar disc herniations at L4-5. As previously noted, the hearing officer's determination regarding whether the claimant's compensable injury extended to include disc herniations at L4-5 or L5-S1 was previously affirmed in Appeal No. 042660, *supra* and will not be reconsidered.

Section 408.122(c) and Section 408.125(e), effective for a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, provide that the designated doctor's MMI and IR report has presumptive weight and that the Commission shall base its determination of IR on that report unless the great weight of the other medical evidence is to the contrary. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), the designated doctor's response to a Commission 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. The hearing officer found that the January 6, 2005, amended certification of the designated doctor is not contrary to the great weight of the other medical evidence.

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. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is 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, 176 (Tex. 1986). In this case, we are satisfied that the hearing officer's MMI and IR determinations are sufficiently supported by the evidence.

We affirm the decision and order of the hearing officer.

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge