APPEAL NO. 022406
FILED NOVEMBER 7, 2002

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 July 24, 2002, with the record closing on August 14, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant), as a result of her compensable injury of _____, reached maximum medical improvement (MMI) on October 17, 2000, with an impairment rating (IR) of 15%[1], and that she did not have disability for the time period of October 18, 2000, through March 22, 2002. The claimant appealed, arguing that the designated doctor's second post-surgery certifications should have been given presumptive weight and that the evidence supported the claimant's alleged period of disability. The respondent (carrier) responded, arguing that the first certification by the designated doctor should have been afforded presumptive weight as it became final when it was not disputed before the first supplemental income benefits (SIBs) period[2] expired, in compliance with Rule 130.102(g), and that the claimant's alleged letter of dispute, dated September 4, 2001, did not pass muster under Advisory 96-14.[3] The carrier urged that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant reached MMI October 17, 2000, with an IR of 15%. While the claimant testified that she had surgery to her cervical spine after the designated doctor assigned her these certifications, and thereafter sought a reexamination, the carrier argued, and the hearing officer found, that she failed to validly dispute the certifications in a timely manner. It was undisputed that the designated doctor originally certified the claimant at MMI on October 17, 2000, with an IR of 15%, and that the claimant had cervical spine surgery on February 6, 2001. The claimant argues that a letter her counsel sent to the Texas Workers' Compensation Commission (Commission) on September 4, 2001, acted as a valid dispute of the designated doctor's certifications, in that in the letter, she sought reexamination and included attached surgical records. The carrier argued, and the hearing officer agreed, that the September 4, 2001, letter did not meet the standards espoused in Advisory 96-14 (was not a TWCC-32 or the functional equivalent thereof), and was untimely written, as it came 11 months after the original certifications, and 6 months after the claimant's surgery for her compensable injury. Pursuant to Section 408.122(c), the hearing officer gave presumptive weight to the designated doctor's original certifications, which

[1] The hearing officer adopted the MMI and IR as originally certified by the designated doctor.
[2] The first SIBs period was from August 29, 2001, through November 27, 2001.
[3] Advisory 96-14 provides that an MMI/IR dispute should be filed in the form of a "Notice of Maximum Medical Improvement/Impairment Rating Dispute" (TWCC-32), or in the functional equivalent of a TWCC-32.

became final at the expiration of the first SIBs quarter (Rule 130.102(g)[4]), and concluded that the claimant reached MMI on October 17, 2000, with a 15% IR. We note here that the hearing officer appears to have woven waiver and estoppel findings and conclusions into the determination based upon Rule 130.102(g); however, the provisions of the rule are, as applied, sufficient to support the hearing officer. *See* Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied).

The hearing officer did not err in determining that the claimant did not have disability after October 17, 2000. The claimant testified/conceded that she was unable to obtain and retain employment at her preinjury wages because of a nonwork related injury, bilateral carpal tunnel syndrome, and the surgeries she had for that condition. The hearing officer thus found that the claimant failed to show, as a matter of law, that she had disability for the period after October 17, 2000. *See* Section 401.011(16).

The hearing officer did not err or abuse his discretion in *sua sponte* determining that the date of the claimant's statutory MMI was August 28, 2001, as he simply took official notice of easily determinable date using accepted procedures and guidelines, as in reviewing the Commission file. The hearing officer asked questions of the claimant as to when her disability accrued, and was actually required to determine the date of statutory MMI. The claimant did not meet her burden of proving the date of MMI. (See Section 401.011(30)). It is not material that the issue of the claimant's statutory MMI date was not certified from the BRC; given the issues at bar, the hearing officer was forced to determine the statutory MMI date.

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 the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We will uphold the hearing officer's judgment if it can be sustained on any reasonable basis supported by the evidence. Daylin, *supra* Texas Workers' Compensation Commission Appeal No. 950791, decided July 3, 1995. In this case, the determination that the designated doctor's original certification of MMI/IR became final is supported by the record, and we therefore affirm the decision and order.

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[4] Rule 130.102(g) reads in pertinent part that "If there is no pending dispute regarding the date of [MMI] or the [IR] prior to the expiration of the first quarter, the date of [MMI] and the [IR] shall be final and binding."

The hearing officer's decision and order are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Veronica Lopez
Appeals Judge