

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 February 3, 2003. The hearing officer determined that (1) the compensable injury of _____, extends to and includes an injury to the left wrist and/or the CMC joint and De Quervain's tenosynovitis; (2) the respondent (claimant) had disability from _____, through November 26, 2002; (3) the claimant is entitled to change treating doctors, pursuant to Section 408.022; (4) the appellant (carrier) waived the right to dispute the order approving a change in treating doctor because the carrier failed to file a dispute within 10 days of receipt of the order; (5) the claimant reached maximum medical improvement (MMI) on November 26, 2002, as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission); and (6) the claimant's impairment rating (IR) is 3% as certified by the Commission-appointed designated doctor. The carrier appeals these determinations on sufficiency of the evidence grounds. The claimant did not file a response.

DECISION

Affirmed.

EXTENT OF INJURY AND DISABILITY

The hearing officer did not err in reaching the complained-of extent-of-injury and disability determinations. The determinations involved questions 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)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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).

CHANGE OF TREATING DOCTORS

The hearing officer did not err in determining that the claimant is entitled to change treating doctors. Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE 126.9(e) (Rule 126.9(e)) establish the criteria for selecting and changing a treating doctor. The carrier asserts that the claimant sought a change in treating doctor for the improper purpose of obtaining an off-work slip and a new IR. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the evidence

presented, the hearing officer could find that the claimant's request to change treating doctors met the requirements of Section 408.022. Accordingly, we cannot conclude that the hearing officer abused her discretion in determining that the claimant is entitled to a change in treating doctors. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in determining that the carrier waived the right to dispute the order approving a change in treating doctor. Rule 126.9(g) provides that a carrier may dispute the order regarding a change of treating doctor within 10 days after receiving the order. The evidence shows that the order approving the claimant's change in treating doctors was placed in the carrier representative's box on September 5, 2002, and the carrier did not dispute the order until September 20, 2002. The hearing officer's determination, therefore, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

MMI/IR

The hearing officer did not err in determining that the claimant reached MMI on November 26, 2002, with a 3% IR, as certified by the Commission-appointed designated doctor. The carrier's appeal of the hearing officer's MMI/IR determination is premised upon the success of its appeal with regard to the extent of injury. Given our affirmance of the extent-of-injury determination, we likewise affirm the hearing officer's MMI/IR determination.

The decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Terri Kay Oliver
Appeals Judge