APPEAL NO. 042176
FILED OCTOBER 26, 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 (CCH) was held on July 29, 2004. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of _____, extends to and includes the following diagnoses: reflex sympathetic dystrophy (RSD)/complex regional pain syndrome (CRPS), chondromalacia of the left knee, torn anterior cruciate ligament left knee, and degenerative joint disease of the left knee; (2) that the respondent (claimant) reached maximum medical improvement on June 4, 2003, with a 21% impairment rating (IR); (3) that the claimant did not have good cause for failing to attend a carrier-required medical examination for July 17, 2002, beginning July 17 and continuing through July 25, 2002, that for this failure the claimant is not entitled to temporary income benefits (TIBs) only beginning July 17 and continuing through July 25, 2002; and (4) that the claimant did not have good cause for failing to attend a designated doctor required examination at the time scheduled for July 22, 2002, and that for this failure the claimant is not entitled to TIBs only for July 22, 2002. The appellant (carrier) appealed, disputing the determinations regarding extent of injury and IR. The carrier additionally appeals evidentiary rulings made by the hearing officer and asserts that the carrier is not liable for TIBs from July 22, 2002, through January 5, 2003. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed.

EVIDENTIARY RULINGS

We first address the carrier's evidentiary objections. The carrier objected to multiple exhibits offered at the CCH by the claimant on the basis that they were not timely exchanged. To obtain reversal of a decision based upon error in the admission or exclusion of evidence, it must be shown that the evidentiary ruling was in fact error, and that the error was reasonably calculated to cause, and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 91003, decided August 14, 1991. The carrier contends that the claimant failed to establish good cause for failing to timely exchange the medical records that were admitted into evidence. After considering the respective positions of the parties, the hearing officer determined that the claimant had established good cause and admitted the exhibits into evidence. We conclude that the carrier has not shown that the hearing officer abused his discretion in determining that the claimant had good cause for the late exchange nor has the carrier shown that the error, if any, amounted to reversible error. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)).

The carrier additionally argues that it was error for the hearing officer to exclude the videotapes and private investigator's reports it offered into evidence. The claimant objected to the admission of the videotape and report on the basis that it was untimely exchanged and because the individual depicted in the surveillance (the videotapes and report) was not the claimant. The hearing officer excluded the evidence stating that the claimant does not appear to be the individual shown in the video. The carrier argues on appeal that the hearing officer should have admitted the tapes and then made a determination of whether the claimant was the individual depicted in the videotapes. It is clear from the record that the hearing officer was convinced that the claimant was not the individual on the tape. The fact the hearing officer made this determination prior to admitting the exhibits does not amount to reversible error.

EXTENT OF INJURY

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant had the burden to prove the extent of the compensable injury. Conflicting evidence was presented on this issue. The hearing officer noted that the persuasive medical evidence indicates the compensable injuries to the claimant's left knee when he was struck by the rotating table aggravated, was a cause of, or naturally resulted in RSD/CRPS of the lower left extremity; chondromalcia of the left knee; torn anterior cruciate ligament left knee, and degenerative joint disease of the left knee.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the evidence. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Our review of the record reveals that the hearing officer's extent-of-injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

IMPAIRMENT RATING

The carrier argues that the designated doctor did not properly apply the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) and that his opinion is not supported by the medical evidence.

Section 408.125(c) provides that where there is a dispute as to the IR, the report of the Texas Workers' Compensation Commission-appointed designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Rule 130.6(i) provides that the designated doctor's response to a 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. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

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, *supra*. In this case, we are satisfied that the hearing officer's IR determination is sufficiently supported by the evidence.

SUSPENSION OF TIBs

The hearing officer found that the claimant did not have good cause for failing to attend a carrier required medical examination (RME) for July 17, 2002, and that for this failure the claimant is not entitled to TIBs beginning July 17 and continuing through July 25, 2002. Additionally, the hearing officer found that "on August 21, 2002, the claimant did not attend the [RME] that was rescheduled based on claimant's failure to attend the July 17, 2002, [RME]" because it was cancelled on July 26, 2002. The carrier argues that the hearing officer could not rely on a summary generated by the claimant's attorney to support the finding that the August 21, 2002, examination was cancelled on July 26, 2002, because "it is not evidence." The carrier made objections to various exhibits offered by the claimant, however, no objection was made to the "summary" which it complains the hearing officer relied on in determining that the examination was cancelled on July 26, 2002. The "summary" was admitted into evidence and the weight to be given to it was a matter for the hearing officer to decide. Although another fact finder may have drawn different inferences from the evidence, which would have supported a different result, that fact does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer found that on July 22, 2002, after the claimant arrived late for the designated doctor medical examination, he asked at the doctor's office to have the examination rescheduled, and that the claimant's request for reexamination was "by the day the examination was originally scheduled to occur" within the meaning of Rule 130.6(c)(1) but the request was improperly refused. The carrier argues that no evidence supports the hearing officer's finding that the claimant asked the designated doctor to reschedule the appointment on the date of the examination. However, the carrier acknowledges the claimant testified at the CCH that he got there late and "told them if they could reset it for a later date…." There is sufficient evidence to support the findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **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 STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge