APPEAL NO. 041835-s
FILED SEPTEMBER 20, 2004

This appeal arises pursuant to Texas Workers' Compensation Act, TEX. LAB. CODE ANN § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 1, 2004. The hearing officer determined that the respondent's (claimant) _____, compensable injury extends to and includes an injury to the left wrist in the form of entrapment neuropathy; that the Texas Workers' Compensation Commission (Commission)-appointed designated doctor's impairment rating (IR) certification is entitled to presumptive weight; and that the claimant's correct IR is 19%.[1] The appellant (carrier) appealed both determinations, asserting both sufficiency of the evidence and that the designated doctor was no longer qualified to act in that capacity, therefore his certification isn't entitled to presumptive weight. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part, reversed in rendered in part, and reversed and remanded in part.

We first address the hearing officer's extent-of-injury determination. Extent of injury is a question of fact. 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 Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Although there was conflicting evidence, the hearing officer was persuaded by the evidence presented by the claimant that the compensable injury includes a left wrist injury in the form of entrapment neuropathy. In view of the evidence presented, we cannot conclude that the hearing officer's 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). We note that while a designated doctor's opinion does not have presumptive weight regarding an extent-of-injury issue, it is nonetheless a medical opinion which a hearing officer may consider.

[1] The designated doctor certified that the claimant had a 20% IR. In correcting the IR, the hearing officer noted, in regard to the left shoulder, that the designated doctor added a 10% upper extremity rating for range of motion (ROM) to a 6% upper extremity rating for the arthroplasty, getting 16%. These two figures should have been combined resulting in a 15% upper extremity rating. We note that the designated doctor actually assessed a 6% left upper extremity impairment for ROM and added to it a 10% impairment for the left shoulder arthroplasty. The hearing officer correctly determined that these two figures should be combined and not added, resulting in a 15% left upper extremity rating for the shoulder.

The evidence reflects that Dr. E examined the claimant on June 30, 2003, in his capacity as designated doctor to determine maximum medical improvement (MMI) and IR. As a result of that examination, Dr. E certified that the claimant was at MMI on June 30, 2003, with a 20% IR. The record further reflects that the Commission sent Dr. E two letters of clarification dated October 21, 2003, and January 29, 2004. Enclosed in the October 21, 2003, letter of clarification was a carrier peer review report expressing disagreement with Dr. E's IR certification. Dr. E was asked if the report changed his opinion regarding the claimant's IR, and if a reexamination of the claimant was necessary. On October 24, 2003, Dr. E responded noting that he disagreed with the peer review report and that his opinion regarding the claimant's IR remained unchanged. Enclosed in the January 29, 2004, letter of clarification was a report from a carrier requested required medical examination (RME) which was performed on December 16, 2003. The RME report was also critical of Dr. E's IR certification. On February 3, 2004, Dr. E responded stating that there was no reason for him to change his opinion and that he stood by his certification.

The carrier contends that Dr. E was not authorized to act as designated doctor when he responded to the above-referenced letters of clarification. We agree. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 180.21(a) (Rule 180.21(a)) says that, "[I]n order to serve as a designated doctor, a doctor must be on the Designated Doctor List (DDL)." We believe that when a designated doctor is asked to respond to inquiries regarding his or her report, asked to defend his or her report, or asked to review medical reports from other health care providers and comment on them as they relate to a claimant's condition, that doctor is by definition "serving" in the role of designated doctor. Commission records show that Dr. E was not on the DDL after August 31, 2003. Therefore, he could not serve as designated doctor after that time to consider whether the claimant's IR should be changed. *See* Texas Workers' Compensation Commission Appeal No. 040683, decided May 18, 2004. This result is consistent with Rule 130.6(i), which provides that a designated doctor's response to a Commission request for clarification has presumptive weight as it is part of the doctor's opinion. We must remand this case to the hearing officer for the selection of a new designated doctor from the DDL. Given our holding in this regard, we also reverse the hearing officer's determinations regarding IR and remand the case for further proceedings consistent with this decision.

We affirm the hearing officer's determination regarding extent of injury. We reverse the hearing officer's determination that the claimant's IR is 19%, and render a decision that the issue of IR cannot be decided at this time. We remand the case for the selection of a new designated doctor and for further proceedings consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section

410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

ROBIN MOUNTAIN
VICE PRESIDENT OF ACE/USA
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IRVING, TEXAS 75063.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Robert E. Lang
Appeals Panel
Manager/Judge

_____
Robert W. Potts
Appeals Judge