

APPEAL NO. 92365

On July 7, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The claimant, (claimant), appellant herein, appeals the hearing officer's determination that he has an eight percent impairment rating as assigned by a doctor designated by the Texas Workers' Compensation Commission (Commission), and requests that we reverse the decision and render a new decision that he has a 12 percent impairment rating as assigned by his treating doctor. Respondent, a self-insured political subdivision, requests that we affirm the decision of the hearing officer.

DECISION

The decision of the hearing officer is affirmed.

The sole issue to be determined at the hearing was appellant's impairment rating resulting from a compensable injury sustained on (date of injury). "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury. Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.03(25). In a Report of Medical Evaluation (TWCC-69), (Dr. H), appellant's treating doctor, certified that appellant reached maximum medical improvement (MMI) on December 30, 1991, and assigned an impairment rating of 12 percent. Respondent disputed the treating doctor's impairment rating and made what it considered a reasonable assessment of an impairment rating of five percent. When the parties were unable to agree on a designated doctor, the Commission selected (Dr. C) as the designated doctor. In a Report of Medical Evaluation (TWCC-69), Dr. C certified that appellant reached MMI on February 24, 1992, and assigned an impairment rating of eight percent. In support of his position that the impairment rating should be based on his treating doctor's report, appellant testified that his treating doctor had been treating him for his injury for about one and one-half years, whereas the designated doctor had examined him only one time. He described the examination by the designated doctor as "bleak."

Pursuant to Article 8308-4.26(g), if the impairment rating is disputed, the Commission directs the employee to be examined by a designated doctor selected by the mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the Commission directs the employee to be examined by a designated doctor selected by the Commission. The report of the designated doctor selected by the Commission has presumptive weight and the Commission must base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. Pursuant to Article 8308-6.34(e), the hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence.

In the instant case, the hearing officer found that the report of the designated doctor was entitled to presumptive weight, and that the great weight of the other medical evidence was not contrary to that report. Having reviewed the hearing record, we conclude that the hearing officer's decision to base the impairment rating on the report of the designated

doctor is supported by sufficient evidence and is in accordance with the provisions of Article 8308-4.26 and applicable Commission rules.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge