

APPEAL NO. 92689

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On November 16, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine issues relating to the correct impairment rating resulting from a lumbar spinal injury sustained by the claimant, (claimant), who is the respondent in this appeal. The hearing officer determined that the report of the designated doctor was to be given presumptive weight, and that the great weight of other medical evidence was not to the contrary. The claimant was found to have a 28% impairment rating.

The carrier has appealed this decision, claiming that the great weight of medical evidence is against the designated doctor's assessment. Ironically, part of the great weight it urges against this assessment is the treating doctor's report that led to the dispute. The claimant has not replied.

DECISION

After reviewing the record of the case, we affirm the hearing officer's decision.

The claimant, who was 60 years old at the time, was injured on (date of injury), 1991, when he lifted a very heavy box while employed as a courier for a company owned by (employer). Surgery was not recommended for him due to a lung condition that was detected. The claimant testified that he is in constant pain, has limited motion, and severe incapacity to go about his activities of daily living. Records from his treating doctor, (Dr. R), of the (city) Orthopedic Surgery and Sports Medicine Clinic, indicate a diagnosis of degenerative disease of the spine, and desiccation of the L4-5 and L5- S1 discs, along with herniation/bulging of both, and corroborate the pain. Dr. R determined that the claimant had reached maximum medical improvement (MMI) effective August 6, 1991, and assigned an 18% impairment rating based upon his specific injury as well as range of motion. Assessment of both elements as part of impairment is specifically indicated in the American Medical Association Guides to the Evaluation of Permanent Impairment (Guides), pages 71-94. The claimant testified that he was allowed to perform the range of motion by bending and moving as requested and observed by Dr. R.

The carrier disputed this and asked for claimant to be examined by its own doctor, (Dr. S), who has a specialty in orthopedic surgery and lower back disorders. According to the claimant, Dr. S assisted him with his range of motion exercises by pressing on him as he bent. Dr. S's report indicates that range of motion was performed by the claimant himself. Dr. S assigned a 7% impairment rating, upon his physical abnormality only, based upon Table 49 of the Guides, and not range of motion, although the text of Dr. S's report indicates that he observed some limitations with range of motion.

A designated doctor, M.D. (Dr. G), who has a specialty in physical medicine and rehabilitation, was appointed by the Texas Workers' Compensation Commission

(Commission). According to the claimant, Dr. G allowed him to perform range of motion exercises unassisted. Dr. G told him that his impairment rating was coming out so high that he wanted to send him to (Harris) for range of motion measurements. Harris' notes indicate that it used the inclinometer method to measure range of motion. Based upon his examination, review of records, and the report from Harris, Dr. G assigned a 28% impairment rating, with a MMI certification date of March 16, 1992. (The achievement or date of MMI as assigned by Dr. R, however, appeared not to have been in issue.)

The Table on page 73 of the Guides is "Table 49. Impairment Due to Specific Disorders of the Spine." Section 2 of this table is entitled "Intervertebral disc or other soft tissue lesions." The table assigns whole body impairment ratings to three regions of the spine. Section II, C lists the ratings for "Unoperated with medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasm, or rigidity associated with moderate to severe degenerative changes on structural tests, including unoperated herniated nucleus pulposus, with or without radiculopathy." The 7% rating assigned to the lumbar spine under this listing was apparently used by Dr. R, Dr. S, and Dr. G. The primary difference between ratings is in range of motion.

The carrier asked (Dr. L), who has a specialty in orthopedic surgery, to review unspecified medical records relating to the claimant, as well as the impairment ratings of the doctors. On July 15, 1992, Dr. L notes an inconsistency in Dr. G's reports concerning the measurements of range of motion of straight leg raising on the claimant's left side, and states that, because of such inconsistencies, he would regard the entire range of motion test as invalid. After disallowing altogether the range of motion impairments, he endorsed a 7% impairment rating using Table 49 of the Guides. Dr. L did not perform an examination of the claimant, nor was he involved in his treatment in any way.

The carrier argued also that the hearing officer's decision is inconsistent with medical information reported by (Dr. T), a neurologist consulted by the claimant. Of course, Dr. T's notes were made months before the earliest certification of maximum medical improvement made in this case, when the claimant's medical condition was changing. As such, any inconsistencies in this case with post-MMI measurements could be, in our opinion, weighed by the hearing officer as generally irrelevant to claimant's extent of impairment after MMI.

The designated doctor under the 1989 Act is an impartial doctor who is used to finally resolve disputes over MMI and impairment rating. To achieve this end, the report of a Commission appointed designated doctor is given presumptive weight. Art. 8308-4.26(g). Only the great weight of medical evidence can reverse this presumptive status. As the Appeals Panel has stated before, this requires more than a mere balancing, or preponderance, of the evidence. Texas Workers' Compensation Commission Appeal No. 92412 (decided September 28, 1992).

In this case, the hearing officer's determination that the great weight of evidence does not overcome the designated doctor's report is supportable by the evidence in the record.

Dr. S and Dr. L totally disallowed any consideration of claimant's limited range of motion, which the Guides indicate can be an important component of assessing impairment. Dr. T's range of motion observations are generally irrelevant to claimant's post-MMI impairment. The hearing officer may also have chosen to believe the claimant regarding his comparison of the nature of range of motion examinations performed by the doctors. The carrier's questioning of claimant about his efforts to find work, or about the uncontroverted injury itself, yielded information largely irrelevant to the issue of "great weight of medical evidence." The hearing officer correctly gave Dr. G's report presumptive weight as to the impairment rating.

The hearing officer's decision, and order regarding payment of impairment income benefits according to the designated doctor's report, is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda Nesenholtz
Appeals Judge