

APPEAL NO. 92725

On December 8, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that the respondent, claimant herein, reached maximum medical improvement (MMI) on September 12, 1992 with 12% impairment of her whole body and ordered payment of benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1991) (1989 Act).

Appellant, carrier herein, contends that the hearing officer erroneously admitted medical reports and that the designated doctor's opinion on MMI and impairment rating is contrary to the great weight of other medical evidence, and requests that we reverse the hearing officer's decision. Claimant responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

The issue unresolved at the benefit review conference (BRC) and framed at the contested case hearing (CCH) was:

What is claimant's correct impairment rating based on her compensable injury of (date of injury).

Claimant testified briefly at the CCH through an interpreter, as claimant neither speaks nor understands English. Claimant was assisted by a Spanish-speaking ombudsman. Claimant testified she was injured on (date of injury) while employed by (employer). Claimant apparently sustained injuries to her back and the only issue left in dispute is the correct impairment rating. The claimant submitted a TWCC-69 (Report of Medical Evaluation) from (Dr. W), the Texas Workers' Compensation Commission (Commission) designated doctor, an almost illegible TWCC-69 from (Dr. A) (claimant's treating doctor), and two reports from (Dr. L), the carrier's doctor. The hearing officer, as evident from his case discussion, carefully reviewed the evidence and found that the designated doctor correctly evaluated the data he had been given and his report was not contrary to the great weight of other medical evidence.

Carrier appeals on the basis that the designated doctor's report and the treating doctor's evaluation had not been exchanged and interrogatories requesting identity of witnesses and documents which claimant intended to introduce had not been answered and therefore, "Claimant should have been precluded from offering any evidence at the time of the Contested Case Hearing." The hearing officer noted that the objected to ratings and medical reports of (Dr. W) and (Dr. A) were available and considered at the BRC on October 26, 1992, and it would be pointless to require claimant to send carrier another copy of medical reports that carrier already had. See Texas Workers' Compensation Commission

Appeal No. 91088, decided January 15, 1992. The carrier alleges two pages of the designated doctor's report were not available at the BRC; however, clearly the impairment rating was considered. We also note that claimant neither speaks nor writes English and claimant alleges that the "questions" (interrogatories) sent her were in English and "[f]or this reason, (claimant) could not find someone who could help (her) answer until the day of the hearing." The hearing officer found good cause for failing to exchange reports (which carrier had in its possession) and failing to answer interrogatories until the day of the hearing. We note claimant called no witnesses, other than very briefly testifying herself and there was no cross-examination by the carrier. The hearing officer did not abuse his discretion in finding good cause for failure to exchange the information. We find no merit in carrier's contention on this point.

Carrier also contends "The great weight of the evidence is contrary to a rating of twelve (12%) percent." Carrier emphasizes that many of the tests were "normal", there was "no evidence of weakness", there was no disc herniation and that "[t]he cumulative evidence is to the contrary of (the designated doctor's) report." We note, however, that the designated doctor submitted a signed TWCC-69, showed his computations on Figure 83 of the correct printing and edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, mandated by Article 8308-4.24, and also submitted a comprehensive two page narrative. Article 8308-4.26(g) states that the report of the designated doctor shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. The opinion of (Dr. L), the carrier's doctor, is the only evidence contrary to the designated doctor, in that (Dr. A), in an almost illegible copy of a TWCC-69, also gives a 12% whole body impairment rating. The 1989 Act gives presumptive weight to the designated doctor's rating and we have repeatedly noted in the past the "unique position" the designated doctor's report occupies. See Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. In that case, and others, we have held that the designated doctor's report and rating cannot be outweighed by a mere balancing of the evidence or even a preponderance of the evidence.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). Where, as here, there is sufficient evidence to support his determinations, there is no sound basis to disturb his decision. Only if we were to determine, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would we be warranted in setting aside his decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The hearing officer's decision is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge