

APPEAL NO. 931138

On November 17, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. Section 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). The issue at the hearing was the impairment rating of the appellant (claimant). The hearing officer determined that the claimant has a 12 percent impairment rating as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission), and decided that the claimant is entitled to 36 weeks of impairment income benefits. The claimant disagrees with the hearing officer's decision and requests that we find that he has a 19 percent impairment rating as reported by his treating doctor. The respondent (carrier) responds that the hearing officer's decision is supported by the evidence and requests that it be affirmed.

DECISION

The decision of the hearing officer is affirmed.

The claimant injured his left knee and lower back when he slipped on a truck step at work on (date of injury). (Dr. B), the claimant's treating doctor, certified that the claimant reached maximum medical improvement (MMI) on March 2, 1993, with a 19 percent whole body impairment rating. The parties advised the hearing officer that there was no dispute regarding Dr. B's date of MMI, but there was a dispute regarding impairment rating. The Commission chose (Dr. T) as the designated doctor. Dr. T assigned the claimant a 12 percent whole body impairment rating.

Section 408.125(e) provides that where a designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the determination of impairment rating on that report unless the great weight of the medical evidence is to the contrary. The hearing officer found that Dr. T's report of a 12 percent impairment rating was not contrary to the great weight of the medical evidence and concluded that the claimant has a 12 percent impairment rating as reported by Dr. T.

In his appeal, the claimant contends that Dr. T did not perform a proper examination; that he did not examine his left knee; that he did not use instruments in measuring range of motion; that he did not review diagnostic tests; and that he did not follow the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). In his answers to questions on written deposition, Dr. T stated that he performed a physical examination of the claimant (results of the examination were set forth in his narrative report); that he examined the claimant's back and left knee; that he used a goniometer in measuring for abnormal motion of the knee and used an inclinometer in measuring for abnormal range of motion of the back; that he reviewed the claimant's diagnostic tests; and that he followed the AMA Guides in determining the claimant's impairment rating. The whole body impairment rating assigned

by Dr. T is composed of impairment ratings for the claimant's left knee and back. Having reviewed the record, we conclude that the hearing officer's decision is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. See Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992, and Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992.

The claimant also contends on appeal that he was not given an opportunity to "discuss selection" of a designated doctor. There is no indication in the record that the claimant raised this matter at the benefit review conference or at the hearing. In fact, at the hearing the claimant made no mention whatsoever of any procedural irregularity in the appointment of the designated doctor. Since the lack of opportunity to agree on a designated doctor prior to selection of a designated doctor by the Commission was not raised prior to the appeal, we will not consider that matter for the first time on appeal. See Texas Workers' Compensation Commission Appeal No. 93378, decided June 30, 1993.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Lynda H. Nesenholtz
Appeals Judge