APPEAL NO. 931139

On September 24, 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. § 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 reached maximum medical improvement (MMI) on April 20, 1993, as stipulated by the parties, and that she has a three percent impairment rating as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The hearing officer decided that the claimant is entitled to nine weeks of impairment income benefits. The claimant disagrees with the hearing officer's decision. The respondent (carrier) responds that the decision is supported by the evidence.

DECISION

We affirm the decision and order of the hearing officer.

The parties stipulated that the claimant was injured in the course and scope of her employment with her employer, (employer)., and that the claimant reached MMI on April 20, 1993. The issue at the hearing was the claimant's impairment rating.

According to the history of the injury in medical reports, the claimant worked as a cake decorator for the employer beginning in (month year) and had a gradual onset of carpal tunnel syndrome. The claimant testified that she injured her right wrist, elbow, and shoulder, her left elbow, and the right side of her neck from "repeated work activity." An EMG done in July 1992 indicated mild carpal tunnel syndrome on the right and a right carpal tunnel release was done in August 1992. The claimant was treated by (Dr. N) whose initial medical records were not in evidence.

At the carrier's request, the claimant was examined at the (the Center) in January 1993. (Dr. B) evaluated the claimant at the Center and reported that examination of the cervical spine and upper extremities did not reveal any evidence of tender points, trigger points, or demonstrable muscle spasm. Range of motion of the cervical spine, shoulders, elbows, and wrists was reported as 100% of normal. Examination of the right hand revealed full range of motion of all the fingers and the thumb. Dr. B found no loss of sensation in either hand, and strength, as demonstrated by hand grasp, was normal. Also, sensation to pinprick was normal, and measurements of the arms and forearms were bilaterally equal with no evidence of muscle wasting. Dr. B noted that the claimant had no complaints of any pain or discomfort or loss of sensation, but that she did complain of some degree of weakness which could not be demonstrated by the results of the hand grasp test. Dr. B did not assign an impairment rating but instead, referred the claimant for an impairment evaluation.

In a narrative report dated February 5, 1993, (Dr. O), who is also associated with the Center, reported that the claimant was evaluated and testing showed no significant diminution of strength or sensation, that the claimant had excellent grip strength, and that

the claimant's complaints of some subjective weakness could not be demonstrated on testing. However, Dr. O opined that despite the satisfactory results on testing, the claimant still qualified for a six percent whole body impairment rating due to impairment of the upper extremity based on residual sensory and motor impairment. In a Report of Medical Evaluation (TWCC-69), Dr. O certified that the claimant reached MMI on February 5, 1993, with a six percent impairment rating.

In a letter dated March 22, 1993, Dr. N, the claimant's treating doctor, said that he agreed with the six percent impairment rating assigned by Dr. O. However, in a letter dated April 12, 1993, Dr. N stated that he had assigned the claimant a 14% impairment rating based on sensory deficit due to media nerve compression. Dr. N noted that the claimant's "strength discrepancy" was minimal. Still later, on May 6, 1993, Dr. N revised the claimant's impairment rating to 16% by adding to the impairment for sensory deficit, impairment for loss of strength of the upper extremity.

The parties stipulated that (Dr. S) was the designated doctor chosen by the Commission. Dr. S examined the claimant on March 26, 1993, and reported that the claimant had normal cervical spine motion, that both shoulders showed normal ranges of motion with no evidence of specific tendinitis or nerve problem, and that both elbows showed normal ranges of motion. Dr. S noted some tenderness of the left elbow and some tenderness in the right forearm. Dr. S further found no evidence of lateral epicondylitis at either elbow and no evidence of ulnar neurapraxia at the right elbow. Dr. S also stated that "subjective sensibility" was normal in all digits and that all tests to elicit neurapraxia at the wrist, including wrist flexion, wrist extension, and percussion, were negative bilaterally. Dr. S requested electrodiagnostic studies to rule out the possibility of a possible pronator teres syndrome in the right forearm and to evaluate "post carpal tunnel release and median conduction at the right wrist."

In a letter dated May 21, 1993, Dr. S reported that electrodiagnostic studies performed on April 20, 1993, showed no evidence of either carpal tunnel syndrome or pronator syndrome. In a TWCC-69 dated May 27, 1993, Dr. S certified that the claimant reached MMI on April 20, 1993, (the parties stipulated that April 20, 1993, was the date the claimant reached MMI) and assigned the claimant five percent impairment for the right wrist which he reported equated to a three percent whole body impairment rating. In a letter dated July 28, 1993, Dr. S explained that "sensibility and motion" were part of the impairment rating.

In her appeal, the claimant contends that it is impossible to tell from Dr. S's TWCC-69 and narrative report whether he complied with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), and further contends that it appears that Dr. S did not comply with the AMA Guides. Claimant asserts that impairment for "claimant's condition" must be assigned for loss of range of motion, loss of strength, pain, and denervation, and that a three percent impairment for operated carpal tunnel syndrome is "plainly low." The claimant further contends that the three percent impairment rating is against the great weight of the medical evidence. The claimant made the same arguments at the hearing as she

makes on appeal. In his Statement of the Evidence the hearing officer states that "I do not interpret the information presented by [Dr. S] to indicate he did not properly use the [AMA] Guides in awarding an impairment rating. His report indicates he performed a thorough examination and considered all relevant aspects of claimant's condition in assessing the 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. In this case, the hearing officer found that the great weight of the other medical evidence was not contrary to Dr. S's three percent impairment rating and concluded that the claimant has a three percent impairment rating. We have commented many times upon the "unique position" and "special presumptive status" the designated doctor's report is accorded under the 1989 Act, and upon the fact that no other doctor's report, including that of a treating doctor, is entitled to such deference. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. To overcome the presumptive weight accorded to the report of the designated doctor requires more than a preponderance of the medical evidence; it requires the great weight of the other medical evidence to be contrary to the report. Appeal No. 92412, *supra*. The hearing officer is the judge of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts and contradictions in the evidence, it is the duty of the finder of fact, in this case the hearing officer, to consider these conflicts and contradictions and determine what facts have been established. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The fact finder also resolves conflicts and inconsistencies in the testimony of expert medical witnesses. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. Civ. App.-Houston [14th Dist.] 1984, no writ).

In the instant case, the carrier's doctor assigned a six percent impairment rating. The treating doctor changed his mind several times in regard to the claimant's impairment rating, initially agreeing with the six percent impairment rating and finally assigning a 16% impairment rating. However, there is no indication in the reports of the treating doctor and the carrier's doctor that they had the benefit of the diagnostic studies of April 20, 1993, which showed no evidence of carpal tunnel syndrome after the carpal tunnel release was performed and no evidence of pronator syndrome. Dr. S, the designated doctor, did have the benefit of the diagnostic studies and his narrative report, as found by the hearing officer, indicated a thorough evaluation of all relevant aspects of the claimant's injury. Having reviewed the record, we conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and are not against the great weight and preponderance of the evidence. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge