APPEAL NO. 93576

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. 1993). On May 5, 1993, a contested case hearing was held in (city), Texas, with the hearing officer, (hearing officer), closing the record on May 24, 1993, after obtaining information from the designated doctor. The hearing officer held that the designated doctor's report was entitled to presumptive weight and determined that maximum medical improvement (MMI) was reached on November 12, 1992, with an eight percent impairment. Claimant asserts that two other doctors believe the impairment rating should be higher, so the great weight of the other medical evidence is contrary to the designated doctor; claimant contends that the rating of his treating doctor, 28%, should be selected as the impairment rating. Carrier did not respond.

DECISION

Finding that the decision and order are supported by sufficient evidence, we affirm.

Claimant had worked for (employer) for over one month when he hurt his back moving a heavy box with another employee. His MRI shows a herniated disc at L5-S1 and degenerative changes "at another level" according to (Dr. H), the designated doctor. (Dr. P), the claimant's treating doctor, noted L4-L5 and L5-S1 disk drying and L5-S1 herniation. (Dr. C), who claimant saw at the request of the carrier, noted a "small" herniated disc at the L5-S1 level and added that the EMG and nerve conduction velocity study showed no evidence of nerve root damage in the legs or back; a CAT scan showed irregularity of the sacrum. Dr. C states that a large spur behind the L5 is the basis for the leg pain.

Dr. P found MMI on November 12, 1992, with 28% impairment. Dr. C found MMI on August 20, 1992, with 10% impairment. Dr. H found MMI on November 12, 1992, with eight percent impairment.

Claimant testified that he disagreed with Dr. H's rating because of the amount of pain he has. Claimant's counsel argued that Dr. H did not state in his report that he complied with the correct version of the Guides to the Evaluation of Permanent Impairment provided by the American Medical Association, Third Edition, 2nd Printing, February 1989, (Guides) so Dr. P's impairment rating should be used. The hearing officer queried Dr. H about the criteria he used and reported in his decision that Dr. H used the correct Guides.

Claimant testified that Dr. H examined him on four or five occasions at approximately three day intervals because Dr. H said that he needed to re-examine him. This testimony is consistent with Dr. H's comment in his report that he tried four times to do "spinal measurements" and was not able to do "a valid measurement." In addition to the TWCC form 69, Dr. H provided six pages of narrative that provides extensive information about the evaluation of claimant. Dr. H's report provides sufficient evidence to support the hearing officer's Finding of Fact No. 5 which stated that a valid range of motion impairment could not

be determined.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. When deciding an issue involving a designated doctor, the hearing officer must consider the evidence under the criteria of Article 8308-4.25 and 4.26, as applicable, to see whether the great weight of other medical evidence is to the contrary of the opinion expressed by the designated doctor. If it is not to the contrary, then the designated doctor's opinion, where applicable, is given presumptive weight. Texas Workers' Compensation Commission Appeal No. 93493, decided July 30, 1993, stated:

> Medical opinion does not have to be weighed according to the number of doctors who take a position; it should be weighed according to its thoroughness, accuracy, and credibility with consideration given to the basis it provides for opinions asserted.

Similarly, Texas Workers' Compensation Commission Appeal 93482, decided July 29, 1993, stated that the legislature in providing for the presumption to be given to the designated doctor did not indicate that familiarity with a patient's past treatment, such as one would expect of a treating doctor, was to be a controlling factor. While the claimant stresses that two doctors view claimant's impairment rating as being greater than the rating of the designated doctor, the rating of Dr. C was only 10% as compared to the designated doctor's eight percent; these two appear to be closer than would be the opinions of Dr. C, specifying 10%, and that of Dr. P, the treating doctor, who specified 28%. The medical evidence was sufficient to support the hearing officer's finding that the great weight of other medical evidence was not contrary to the opinion of the designated doctor.

The Decision and Order of the hearing officer are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge