APPEAL NO. 93633

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (city), Texas, on July 6, 1993, (hearing officer) presiding as hearing officer. The appellant, a political subdivision which is statutorily self-insured (city) appeals the hearing officer's conclusion that the great weight of the medical evidence presented does not overcome the presumptive weight of the designated doctor's determination certifying a 13% whole body impairment rating of the claimant. No response was filed by the claimant.

DECISION

Finding that the decision is supported by sufficient evidence, we affirm.

That the claimant sustained a back injury on (date of injury), in the course and scope of his employment as a fireman is not disputed. On April 27, 1992, his treating physician, (Dr. S), diagnosed pain and tenderness in the lumbar area of the back. X-rays were normal. The claimant next consulted with (Dr. AN) on August 9, 1992, who, according to the claimant's own testimony, was unfamiliar with the process of impairment ratings. Dr. AN reviewed an MRI obtained by the claimant and concluded that it showed an "apparent bulge in disk @ (sic) L4-L5" and referred the claimant to an orthopedic surgeon. The undated Report of Medical Evaluation (TWCC-69) signed by Dr. AN contains a maximum medical improvement (MMI) date of September 17, 1992, and a whole body impairment rating of 6.3%. In his testimony, the claimant asserts that although Dr. AN told him she intended to leave the portion of the evaluation (TWCC-69) dealing with an impairment rating blank, her staff nonetheless calculated this and inserted the figure in the report. Claimant's basis for this testimony is not disclosed in the record. The staff then forwarded the report to the carrier. At the carrier's request, but under protest, the claimant was examined sometime in February or March, 1993, by (Dr. T) who was affiliated with the (city) Impairment Center. Dr. T concluded that the claimant reached MMI on September 17, 1992, with a zero per cent "whole person impairment." The claimant objects to the validity of these conclusions because, he asserts, the actual physical testing was not conducted by Dr. T and because Dr. T only discussed claimant's medical condition with him for about four minutes. On September 16, 1992, on referral from Dr. AN, a Work Capacity Assessment was performed at the HEALTHSOUTH Sports Medicine & Rehabilitation Center "for determination of [claimant's] potential to safely return to work." The examining therapists recommended his return to work with no physical or functional restrictions. On March 8, 1993, (Dr AR) was appointed designated doctor to determine an appropriate impairment rating. Though not requested, Dr. AR found MMI of October 26, 1992. The hearing officer found MMI of September 17, 1992, a conclusion not appealed by either party. Dr. A found a whole body impairment rating of 13% based on a five percent soft tissue impairment of the lumbar spine under Chapter 3, Table 49, of the American Medical Association Guides to the Evaluation of Permanent Impairment, Third Edition (AMA Guides) and eight percent for loss of range of motion.

The relevant determinations of the hearing officer are:

FINDINGS OF FACT

5.[Dr. T] . . . did not perform the examination and measurements to determine the percentage of whole body impairment included in his report.

CONCLUSIONS OF LAW

6.The great weight of the medical evidence presented does not overcome the presumptive weight of the report of the designated doctor; the Claimant's whole body impairment rating is thirteen percent (13%). . .

The hearing officer in a workers' compensation case is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. To this end, the hearing officer as fact finder may believe all, part or none of the testimony of any witness. The testimony of a claimant as an interested party raises issues of fact for the hearing officer to resolve. Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). Hood v. Texas Indemnity Insurance Co., 209 S.W.2d 345 (Tex. 1948). It was for the hearing officer, at trier of fact, to resolve the conflicts in the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

As part of its challenge to the designated doctor's impairment rating, the city seeks to enhance the credibility of its consulting doctor (Dr. T) by challenging the factual finding of the hearing officer that Dr. T did not perform an examination and take measurements of the claimant. City does this by pointing out that, contrary to the testimony of the claimant, Dr. T specifically refers in his report to "[m]y physical examination . . .;" by describing Dr. T as a having been appointed a designated doctor by the Commission in other cases and hence worthy of special respect; and by pointing out the self-serving nature of the claimant's testimony in this regard. The resolution of conflicts in the evidence is the special responsibility of the hearing officer based on his evaluation of the weight and credibility of that evidence. A designated doctor may rely on and adopt reports of other health care providers, including staff technicians. Texas Workers' Compensation Commission Appeal No. 93095, decided March 19, 1993. There is sufficient evidence in the record to support Finding of Fact No. 5 and we see no reason to disturb it on appeal.

The city also challenges the hearing officer's conclusion that the great weight of the

other medical evidence does not overcome the presumptive weight of Dr. AR's report. Section 408.125(e) provides that the report of the designated doctor shall have presumptive weight on the issue of impairment rating unless the great weight of the other medical evidence is to the contrary. We have frequently noted the important and unique position occupied by the designated doctor under the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992. And we have stated that the "great weight" determination amounts to more than a mere balancing or preponderance of the evidence or a counting of medical reports for and against a particular finding. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992.

The other medical evidence of record that purports to directly address the issue of the impairment rating is Dr. AN's and Dr. T's reports. Dr. AN provides no narrative description of how she arrived at an MMI of 6.3%. To the extent that this is in fact her own conclusion, and not that of her staff as claimant maintains, we question how she arrived at a fraction of a percent. Similarly, the city challenges Dr. AR's impairment rating as based on a faulty range of motion analysis because Dr. T found no motion limitations in his examination and because HEALTHSOUTH's physical therapists recommended claimant's return to duty without limitation. Dr. T premises his conclusion that the claimant should not receive any impairment for loss of motion primarily because of his invalidation of test results, not based on objective findings of no limitations. The sports physical, completed by technicians, purports only to determine claimant's suitability for a return to unlimited duty. It does not address impairment. Under these circumstances we will not substitute our judgment for that of the hearing officer's conclusion that the great weight of the medical evidence was not contrary to the designated doctor's conclusions.

For the reasons set forth above, the decision of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge