APPEAL NO. 93739

At a contested case hearing held in (city), Texas, on August 2, 1993, the hearing officer,(hearing officer), took evidence on the sole disputed issue, namely, the appellant's (claimant) correct impairment rating, gave the report of the designated doctor presumptive weight pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 408.125(e) (1989 Act), and concluded it was the eight percent determined by the designated doctor and not the 23% determined by claimant's treating doctor. In his request for review, claimant asserts error by the hearing officer arguing that the great weight of the other medical evidence was against the designated doctor's report for the reasons that the designated doctor had not seen the claimant as much as the treating doctor, the physical therapy (PT) clinic to whom claimant was referred by the treating doctor for an impairment evaluation arrived at the 23% rating using various testing devices, the designated doctor's examination was not as lengthy and thorough as that of the clinic and treating doctor, and certain apparent inconsistencies existed in the impairment rating assigned by the designated doctor. The respondent (carrier) urges the sufficiency of the evidence and affirmance of the hearing officer.

DECISION

Finding the evidence sufficient to support the hearing officer's findings and conclusions, we affirm.

Claimant, the sole witness, testified that on (date of injury), while employed by (employer), he was struck in the head by a slab of rubber coming over an overhead conveyor. He was treated for his injury by (Dr. D) who in December 1991 performed cervical fusion surgery and in June 1992 a cervical laminectomy. He said that Dr. D sent him to (Clinic A) for a functional capacity evaluation (FCE) and to (Clinic B) for PT. According to claimant, Clinic B, in arriving at a 23% impairment rating which Dr. D adopted, performed a lengthy, thorough evaluation using various machines, whereas the designated doctor, (Dr. U), spent only about 12 minutes in his examination using a reflex hammer, pin prick test, and blood pressure device. As for Dr. U's deposition response that he used an inclinometer in his examination, claimant conceded he did not know what an inclinometer was.

In a Report of Medical Evaluation (TWCC-69), bearing a nearly illegible but apparent date of "4/19/93," Dr. U, a neurologist, certified that claimant reached maximum medical improvement (MMI) on "4-5-93" with a whole body impairment rating of eight percent. The "8%" appears to have been written over another number but nearby is the initial "U", as well as the initials "SA." In the detailed narrative report of April 5, 1992, accompanying the TWCC-69, Dr. U's impression was stated as a neck injury requiring surgical procedures on two occasions resulting in pain in the neck and paresthesias in the arm as a major complaint. He also mentioned that claimant had some nerve root damage and has had extensive PT. In a portion of his narrative report entitled "addendum," Dr. U discussed the breakdown of his impairment percentage, apparently in terms of cervical ROM impairment, stating it was "1% for right and left lateral flexion," 4% extension motion, and, "at times, today, 40% flexion

motion was observed in the neck," which, he stated, "comes out to 6%." In his July 29, 1993, deposition responses, Dr. U repeatedly responded to questions which asserted that his impairment rating of claimant was eight percent without denying or changing that rating. At one point, having earlier referenced his narrative report "addendum" in which he broke down the impairment percentages, he stated he was unsure where the eight percent came from and thought he had six percent listed "unless there is something that I am not aware of that was written otherwise but I think the rating of six or eight percent is confirmable by examination." It is obvious Dr. U was referring to his narrative report, as he stated, and apparently did not have the TWCC-69 in front of him when responding to the deposition questions. The claimant asserts that such uncertainty or confusion detracted from the credibility of Dr. U's rating. However, the eight percent rating Dr. U assigned on the face of the TWCC-69 form is clear and, as noted, he repeatedly affirmed that rating in his deposition. Furthermore, the six percent reference in the narrative addendum does not clearly conflict with the eight percent because it may be read to refer to the ROM impairment component. Dr. U stated in his deposition that in forming his opinion he considered not only the loss of ROM, as determined by himself and by others, but also the extent and nature of claimant's operations, his bodily disorders, and his residual symptoms.

In further regard to ROM impairment, Dr. U also discussed in his narrative report various "inconsistencies" referring to inconsistencies ("to a 40% level") found in arriving at the 23% rating, inconsistencies demonstrated in a videotape he viewed showing claimant loading groceries into his car, walking, and driving a tractor on his farm, and inconsistencies demonstrated during Dr. U's own exam.

In his deposition responses, Dr. U indicated he reviewed not only the videotape of claimant but also records of Dr. D, radiology, laboratory, and surgical reports, and evaluations of claimant by others. He also stated he spent from 45 minutes to an hour with claimant, thought his rating was accomplished in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, published by the American Medical Association (AMA Guides), and that he used inclinometers, reflex hammers, pins, blood pressure equipment, and a scale. He further stated he regarded the videotape as "very significant" albeit he could not determine "exact angles and/or degrees of movement" therefrom.

An FCE report from Clinic A stated that claimant, in a symptom magnification screen, exhibited a 40% rate of inappropriate responses which could be explained in part by increased pain.

In a TWCC-69 form which appears to bear the date "2-14-93," Dr D, a neurosurgeon, stated that claimant reached MMI on "1/22/93" with a 23% whole body impairment rating based on 12% for specific disorders of the cervical spine and 12% for loss of ROM. In a January 8, 1993, report, Clinic B stated a 23% rating including a percentage for the second operation and a percentage for ROM impairment, and noted that the AMA Guides were used. In a March 15, 1993, report, Dr. D stated that claimant's "MMI date of "1/22/93" with

a 23% disability" was reached as a result of the evaluation at Clinic B which he "found to be extremely fair and reproducible," and in accord with the AMA Guides. Dr. D stated in a July 30, 1992, report that claimant underwent a cervical fusion at C6-7 on "12/3/91," a cervical laminectomy on "6/16/92," and was referred for PT to improve function and control pain.

We cannot agree with the claimant that the hearing officer erred in giving Dr. U's report the statutory presumptive weight and in determining that the great weight of the other medical evidence was not to the contrary. The ultimate determination of the extent of impairment must be made upon medical and not lay evidence. Texas Workers' Compensation Commission Appeal No. 92394, decided September 17, 1992. We have frequently noted the important and unique position occupied by the designated doctor in the resolution of disputes over MMI and impairment ratings. *See e.g.* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. And we have often stated that a "great weight" determination amounts to more than a mere balancing or preponderance of the medical evidence. Appeal No. 92412, *supra*. We are satisfied here of the correctness of the hearing officer's having accorded presumptive weight to Dr. U's impairment rating. Dr. D felt the rating should be 23%, while the designated doctor believed it to be 8%. That Dr. D and Clinic B felt that claimant's impairment rating was 23% does not constitute the great weight of the medical evidence to the contrary of Dr. U's report that the rating is 8%. *See* Texas Workers' Compensation Commission Appeal No. 93432, decided July 16, 1993, which observed that the "great weight" standard required to overcome a designated doctor's opinion is clearly a higher standard than a preponderance of the evidence standard.

The challenged findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

The decision of the hearing officer is affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Thomas A. Knapp
Appeals Judge