APPEAL NO. 93745

On July 26, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding, to determine whether a benefit review conference (BRC) agreement between the claimant, NT, who is the appellant, should be set aside, and, if so, whether claimant reached maximum medical improvement (MMI) and, if so, her correct impairment rating. Claimant was injured through repetitive trauma with a date of injury of (date of injury), and the injury was carpal tunnel syndrome (CTS) and reflex sympathetic dystrophy to her right arm and shoulder.

The hearing officer determined that claimant, who was represented by an attorney at the BRC where the agreement was executed, did not have good cause to set aside that agreement as to MMI and impairment rating.

The claimant has appealed this decision, arguing that she demonstrated good cause, and has entered into a disadvantageous agreement while under the influence of medication, against advice of counsel. Further, the claimant argues that she has shown the development of a new medical condition, CTS, in her opposite hand from overuse, that has developed since the agreement was executed. There has been no response filed by the carrier.

DECISION

We affirm the decision of the hearing officer.

The claimant testified that since her injury of (date of injury), she has been treated first by (Dr. G), and subsequently by (Dr. S). The record indicates that sometime before October 1, 1992, Dr. G assessed a 37% impairment rating. The carrier informed her that it disputed this rating and would begin payment of impairment income benefits based upon its own reasonable assessment of 15%.

As a result of the dispute, a designated doctor appointed by the Texas Workers' Compensation Commission (Commission), (Dr. H), examined the claimant and determined that she reached MMI on December 2, 1992, with a five percent impairment. Dr. H noted that x-rays were unremarkable for acute injury and that nerve conduction tests were normal. The report, citing the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides), indicated that impairment was not assessed for sensory deficit because it was not determined to be permanent. Dr. H also commented that range of motion deficits were primarily subjective rather than objective in nature.

A BRC was held on April 22, 1993. Claimant was represented by an attorney. She stated that she was talking Vicodin for pain, the same medication she testified that she was taking the day of the CCH. Claimant agreed that she went outside the room and discussed with her attorney the proposed BRC agreement. She did not recall being told by anyone that it would be binding. She testified that when she returned to the conference room, she informed the BRC officer that she was willing to enter into the agreement, and she signed

the agreement, along with her attorney. Claimant maintained that she had been in sharp pain at the BRC, and simply wanted to get it over with so she could go home and take her medication. Although on appeal the argument is made that claimant went against the advice of her attorney when she entered into the agreement, there was no evidence, or argument, to this affect at the CCH.

The terms of the agreement are: 1) Parties agree that MMI was reached on April 2, 1993; 2) Parties agree that carrier owes a total of 15 additional weeks of temporary income benefits (TIBS); 3) Parties agree to a five percent whole body impairment rating. Carrier will pay the $1,844.10 in TIBS lump sum.

A long letter dated May 11, 1993, from Dr. S evaluated the claimant's limitations of range of motion in her right extremity and concluded that claimant had a 23% impairment. The claimant testified that she began to treat with Dr. S prior to the date of the BRC.

The claimant testified that she had been also diagnosed with reflex sympathetic dystrophy. A memorandum of Dr. S dated June 24, 1993, indicated that she had secondary left upper extremity CTS. The report further noted that the left upper extremity had become increasingly painful, as it was being stressed "during the activities of daily living and she can no longer use the right upper extremity to assist." Claimant testified that she was right-handed.

The hearing officer found that claimant had not shown good cause for setting aside the BRC agreement. She further noted that even if she were to set aside the BRC agreement, this would result in adoption of the report of the designated doctor, which included assessment of an MMI date earlier than that agreed upon. The hearing officer stated that the medical evidence introduced at the CCH would not overcome the presumptive weight of the designated doctor's report. The hearing officer further noted that claimant had reached MMI by operation of law 104 weeks after the date income benefits accrued which the hearing officer noted was April 9, 1991.

After review of the record, we affirm the hearing officer's decision and her reasoning. Claimant was represented by counsel at the BRC where the agreement was forged. The 1989 Act, TEX. LAB. CODE ANN. § 410.030 provides:

(a)An agreement signed in accordance with Section 410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless the Commission or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement.

(b)The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier. If the claimant is not represented by an attorney, the agreement is binding on the claimant

through the conclusion of all matters relating to the claim while the claim is pending before the Commission, unless the Commission for good cause relieves the claimant of the effect of the agreement.

We agree with the reasoning of the hearing officer, and her application of the standard set out in Section 410.030(b), underlying the decision not to set aside the BRC agreement. Relating to claimant's contention that there is newly discovered evidence of another condition, we would note that the hearing officer pointed out that claimant reached statutory MMI from her injury (and any arguable compensable extension of that injury) before the time the BRC agreement was executed. Although claimant argues that the designated doctor's report is defective because it did not include the left extremity, we note that Dr. S's 23% impairment rating is also based only on the right extremity injury. The hearing officer apparently determined that the left extremity condition was not sufficiently connected by the evidence to the compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993. A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. TEX. LAB. CODE ANN. § 410.165(a).

The hearing officer's conclusions are sufficiently supported by the record, and her decision is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge