APPEAL NO. 93859

This appeal arises under 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.*). On August 24, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine the issue of whether the claimant, DG, who is the appellant in this case, had reached maximum medical improvement (MMI), and, if so, the extent of permanent impairment as a result of a compensable injury sustained on (date of injury), while claimant was employed by (employer). The parties stipulated at the beginning of the hearing that the claimant had reached MMI on March 15, 1993. The hearing officer determined that the opinion of the designated doctor regarding impairment was not contrary to the great weight of other medical evidence, and he accorded it presumptive weight by finding that claimant had an eight percent permanent impairment to his left shoulder.

The claimant has appealed this decision, arguing that his treating doctor's opinion about the extent of his impairment is the most accurate because he had treated him throughout the course of the injury. The claimant also complains about the thoroughness of the designated doctor's examination, and argues further that he failed to use the correct guideline (specifically, the second printing of the third edition) according to a finding of fact which recites use only of the "Third Edition" of that guideline. The carrier responds that the designated doctor's report recites the proper version of the guideline as the basis for impairment rating, and further that the great weight of other medical evidence was not against his report.

DECISION

The decision of the hearing officer is affirmed.

The claimant was injured on (date of injury), when he was knocked down by a brake handle on a piece of equipment at the employer's worksite. His condition was diagnosed as torn rotator cuff and joint separation of the left shoulder, for which he underwent surgery on April 16, 1992. Claimant said that as a result of pain and inability to function as he used to, he decided to retire earlier than he had originally planned.

Claimant's treating doctor, (Dr. V), certified MMI effective March 15, 1993, and gave claimant a 15% impairment. According to Dr. V's Report of Medical Evaluation (TWCC-69), the impairment stems from limited range of motion of the left shoulder.

The designated doctor, (Dr. T), examined claimant on May 17, 1993. The claimant testified that the examination lasted about 15 minutes, but that Dr. T performed the same tests such as arm raising that his treating doctor, and a carrier doctor, had done in their examinations. Dr. T assessed an eight percent impairment rating for range of motion. He explained in a May 21, 1993, letter how he derived his rating, citing in full the basis as the Second printing, February 1989 AMA Guides to the Evaluation of Permanent Impairment, Third Edition. Dr. T stated that he was not sure why his ratings differed so markedly from

Dr. V, but Dr. T noted that he had repeated his own range of motion tests and felt his results were accurate. Claimant testified that Dr. V received a copy of Dr. T's evaluation, and told him he did not agree, but no comments or responses from Dr. V are in the record.

The use of a designated doctor is intended under the Act to assign an impartial doctor to finally resolve disputes over MMI and impairment rating. To achieve this end, the report of a designated doctor is given presumptive weight. Sections 408.122(b), 408.125(e). Only the great weight of medical evidence can reverse this presumptive status. Section 408.125(e). As the Appeals Panel has stated before, this requires more than a mere balancing of the evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. A claimant's nonmedical testimony or evidence about his condition does not alone provide a sufficient basis to overcome this presumption.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). While the hearing officer is free to consider that a treating doctor may have more familiarity with a patient's condition, the basis of an impairment rating is required to be objective. Section 408.122(a). The hearing officer may have considered that the range of motion measurements which are the basis of claimant's impairment rating are objective measures that did not depend upon a course of treatment by Dr. V, but were competently evaluated and validated by Dr. T in his examination. As it is clear that Dr. T used the version of guidelines required under Section 408.124(b), the fact that the finding of fact does not fully set forth a full description of the version used does not comprise error.

After review of the record, we affirm the hearing officer's decision.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge