

APPEAL NO. 93964

This appeal arises pursuant to 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.*). A contested case hearing (CCH) was held on September 28, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue at the CCH was the appellant's (claimant herein) whole body impairment rating. The hearing officer concluded that the claimant, who had reached statutory maximum medical improvement, had a two percent whole body impairment based upon the report of a designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appeals contending that the treating doctor had pointed out errors in the impairment rating of the designated doctor which constituted the great weight of the other medical evidence to the contrary of the designated doctor's impairment rating. The respondent (carrier herein) files a response to the claimant's request for review arguing that the treating doctor's evidence was not sufficient to overcome the presumptive weight accorded to the designated doctor's opinion and that the hearing officer correctly adopted the designated doctor's impairment rating.

DECISION

Finding no reversible error in the record and sufficient evidence to support the decision of the hearing officer, we affirm.

We had earlier addressed the question of the extent of this claimant's injury in an unpublished decision - Texas Workers' Compensation Commission Appeal No. 93292, decided June 1, 1993. The respondent indicates in its response for review that our decision in that case, affirming the determination of the hearing officer as to the extent of the claimant's injury, has been appealed and is pending in the courts.

The issue in the present appeal is the claimant's impairment rating. The facts of this case are undisputed and all the evidence submitted at the CCH was by way of documents. The claimant was injured on (date of injury). On April 8, 1993, the claimant's treating doctor, (Dr. D), certified on a Report of Medical Evaluation (TWCC-69) that the claimant had a 20% impairment rating. Since the carrier disputed the impairment rating, the Commission selected (Dr. C) to be the designated doctor. On July 8, 1993, Dr. C certified on a TWCC-69 that the claimant had a two percent impairment rating. On August 25, 1993, Dr. D wrote a letter to the Commission criticizing Dr. C's rating and amending his own opinion of the claimant's impairment rating to 16%. Other doctors had earlier expressed opinions as to claimant's impairment. (Dr. W), apparently a carrier medical examination order doctor, rated her impairment at "0%" in June 1992. (Dr. Ch), a carrier consulting doctor, rated her impairment at "0-10%" in November 1992.

The only issue on appeal is whether the hearing officer erred in finding that the claimant's correct impairment rating was two percent. Section 408.125(e) provides in relevant part:

If the designated doctor is chosen by the commission, the report of the designated doctor shall have presumptive weight, and the commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary.

We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, 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 judgment 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). In the present case, the opinion of the treating doctor does not constitute the great weight of the medical evidence contrary to the opinion of the designated doctor regarding impairment, particularly in light of the opinions of the two other doctors - Dr. W and Dr. Ch.

For the foregoing reasons, the decision of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge