

APPEAL NO. 94041
FILED FEBRUARY 11, 1994

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 was held in (City), Texas, on December 14, 1993, (Hearing Officer) presiding as hearing officer. He determined that the appellant's (claimant) correct impairment rating was 10% as assessed by the Texas Workers' Compensation Commission (Commission) appointed designated doctor. The claimant appeals urging, in essence, that he is in pain, has nerve damage in his leg and restricted movement, that his treating doctor is more qualified and experienced, and that his treating doctor's impairment rating should be used. The respondent (carrier) asks that the decision of the hearing officer be affirmed stressing the presumptive weight to be accorded a designated doctor's report.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, we affirm his decision.

The only issue for resolution at the contested case hearing was the claimant's correct impairment rating. On this issue, the hearing officer had a report from the claimant's treating doctor which assessed a 29% impairment rating, and a report from a Commission designated doctor which assessed a 10% impairment rating. Commendably, the hearing officer sought to find an explanation for the difference and conducted telephonic interviews (on a speaker phone) of the two doctors during the hearing. Both doctors explained their views of the ratings assessed and disagreed on several points in the methodology used. The designated doctor, who indicated that he was a member of the Academy of Disability Evaluation Physicians, stated that he used the correct version of the "Guides for the Evaluation of Permanent Impairment," third edition, second printing, published by the American Medical Association (AMA Guides) and pointed out where the treating physician did not correctly use the AMA Guides. He explained his ratings, as did the treating doctor, and reaffirmed his ratings. The claimant testified that the designated doctor did not perform three individual tests for flexation as the doctor stated he did and faulted other of the designated doctor's procedures.

The hearing officer found that the designated doctor's impairment rating was not contrary to the great weight of other medical evidence and found 10% to be the correct impairment rating. Under the provisions of Section 408.125(e) regarding impairment ratings the following is provided:

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. If the great weight of the medical evidence contradicts the impairment rating contained in the report of the

designated doctor chosen by the commission, the commission shall adopt the impairment rating of one of the other doctors.

We have held that the designated doctor occupies a unique position under the 1989 Act and that it takes more than a mere balancing of the medical evidence to overcome the presumptive weight accorded his report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. In this case, the hearing officer did more than merely consider the two disparate impairment rating reports before him and conducted interviews of the two doctors and satisfied himself that the designated doctor's report was entitled to presumptive weight. We have reviewed the complete record in this case and do not find any basis to set aside the hearing officer's findings and conclusions. There is sufficient evidence to support his decision and order. We do not discount the claimant's assertion that he still, unfortunately, experiences some pain and residual effects of his injury. However, this is not a basis to conclude that maximum medical improvement has not been achieved or that an impairment rating is erroneous. See *generally* Texas Workers' Compensation Commission Appeal No. 93007, decided February 18, 1993; Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993. Finding the decision and order supported in law and fact, we affirm.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge