

APPEAL NO. 94043  
FILED FEBRUARY 11, 1994

At a contested case hearing held in (City), Texas, on December 14, 1993, the hearing officer, (Hearing Officer), took evidence on the sole disputed issue, namely, the correct impairment rating (IR) for the appellant's (claimant) uncontested back injury. The hearing officer determined, based on the report of the designated doctor, that claimant's IR was seven percent. Claimant's contention at the hearing was that the 21% IR assigned by her treating doctor should be adopted because it included additional impairment for abnormal range of motion (ROM). Claimant's request for review challenges the hearing officer's determination while the response filed by the respondent (carrier) asserts the sufficiency of the evidence to support the hearing officer's decision.

DECISION

Finding the evidence sufficient to support the hearing officer's decision and order, we affirm.

Claimant, the sole witness, testified that she hurt her back on (date of injury), while lifting bundles. The history in her medical records stated she was lifting a bundle of pants and felt "a pop" in her upper back. The parties stipulated that on that date she suffered a compensable injury while employed by (employer). Claimant testified that her treating doctor, (Dr. M), took measurements of her back and never told her they were invalid. She also said she was seen on three separate occasions by (Dr. H), the designated doctor selected by the Texas Workers' Compensation Commission (Commission). She said he wanted her to do more (apparently referring to spinal measurements) but she could not do so because of the pain; and that he told her he would assign her an IR of seven percent. Claimant also stated she was seen by (Dr. G). However, no report of Dr. G was introduced into evidence. Claimant argued to the hearing officer that because Dr. H measured her ROM on three rather than six occasions, his report was incomplete; and, that the hearing officer should adopt the report of Dr. M because he never told her the ROM measurements he took were invalid.

According to Dr. M's Report of Medical Evaluation (TWCC-69) and accompanying narrative report dated March 8, 1993, he assigned claimant an IR of 21%, based on the "combined values chart," which consisted of seven percent for "chronic lumbar soft tissue condition with residuals" and 15% for "decreased [ROM] of the lumbar spine." Dr. M's diagnosis was "lumbalgia" and his records stated that an MRI evaluation of September 16, 1992, was noted to be "completely normal."

According to Dr. H's TWCC-69 and accompanying narrative report of August 24, 1993, claimant's IR was seven percent for thoracic and lumbar spinal pain of more than six months duration. Dr. H assigned no additional impairment for abnormal ROM because claimant's spinal measurements were "invalid." In his narrative report Dr. H indicated that he took spinal measurements with a goniometer. He stated that claimant's initial spinal

measurements were invalid and that he asked her to undergo further spinal measurements (apparently referring to measurements by, P.T. (Mr. K) to whom he referred claimant). Dr. H's report further stated that he would have claimant return for additional measurements and would amend his TWCC-69 if valid spinal measurements were later obtained. Dr. H also stated that he found no evidence of neurological deficit but that claimant did have "significant functional overlay complicating her recovery."

Also in evidence were the records of Mr. K to whom claimant was referred by Dr. H for lumbar ROM measurements. According to these records, claimant's lumbar ROM was measured with a digital inclinometer on August 24, 26, and 30, 1993; her lumbar flexion, lumbar extension, and left and right straight leg raises were measured not less than three times on these dates; and on each date her lumbar ROM measurements were invalidated "due to discrepancies between the sum of sacral ROM and tightest straight leg raise."

The hearing officer found, among other things, that none of the ROM measurements taken by Dr. H or at his request met the validity criteria of the Guides for the Evaluation of Permanent Impairment, third edition, second printing, published by the American Medical Association, that Dr. H determined that claimant has a seven percent IR based on her back pain of more than six months duration without additional impairment due to lack of valid ROM measurements, and that the great weight of the other medical evidence is not contrary to the report of Dr. H.

In her appeal, claimant does not challenge any particular factual finding but simply states she wishes "to appeal the Hearing Officer's conclusion that [her] impairment rating was 7%." With respect to the determination of an employee's IR, the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 408.125(e) (1989 Act) (formerly V.A.C.S., Article 8308-4.26(g)) provides that the report of the designated doctor chosen by the Commission shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. This "great weight" determination amounts to more than a mere balancing or preponderance of the medical evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. A designated doctor's report should not be rejected "absent a substantial basis to do so." Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993. And medical conclusions are not reached by counting the number of doctors who take a particular position. The opinions must be weighed according to their "thoroughness, accuracy, and credibility with consideration given to the basis it provides for opinions asserted." Texas Workers' Compensation Commission Appeal No. 93493, decided July 30, 1993.

We are satisfied that the hearing officer's determinations that the designated doctor's report was entitled to presumptive weight and that claimant's IR was seven percent are sufficiently supported by the evidence. We do not agree with claimant's assertion that the 21% IR found by Dr. M constituted the great weight of the other medical evidence against the designated doctor's report or that the designated doctor failed to give appropriate consideration to range of motion limitations and therefore that claimant's IR

should be 21%. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility to be given to the evidence. The hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We will not disturb the hearing officer's findings unless they are 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., 715 S.W.2d 629 (Tex. 1986).

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Lynda H. Nesenholtz  
Appeals Judge

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Alan C. Ernst  
Appeals Judge