APPEAL NO. 94138

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 29, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the hearing were whether the appellant (claimant) reached maximum medical improvement (MMI) and, if so, what is his impairment rating (IR). The hearing officer determined that the claimant's date of MMI was December 17, 1992, and that his correct impairment rating was seven percent as found by the Texas Workers' Compensation Commission (Commission) selected designated doctor and that the great weight of the other medical evidence was not contrary to the report of the designated doctor. The claimant appeals only the hearing officer's determination of IR and contends that the report of the designated doctor is invalid and unreliable and that the 18% IR given by his treating physician is correct. Attached to his appeal was additional evidence about his medical condition which, with one exception, was in existence prior to the contested case hearing, but not introduced at the hearing. We will not consider this evidence for the first time on appeal. Section 410.203(a); Texas Workers' Compensation Commission Appeal No. 93924, decided November 17, 1993. The respondent (carrier) replies that the decision of the hearing officer is supported by sufficient evidence.

DECISION

The decision and order of the hearing officer are affirmed.

It is not disputed that the claimant injured himself in the course and scope of his employment as a truck tire changer. On (date of injury), while lifting a truck tire and wheel estimated to weigh about 170 pounds, he felt pain in his back. He continued working, but the next day the pain got worse. Over the following weekend the pain went down his left leg to the calf. He first saw his family doctor on July 3, 1992, and was referred to (Dr. B) whom he saw towards the end of July 1992. The only reports of Dr. B in evidence are a Report of Medical Evaluation (TWCC-69), signed on September 29, 1993, and a report of a follow-up visit on November 19, 1993. In the TWCC-69, Dr. B assigned an IR of 18%, which consisted of "a 4% impairment rating for his lumbar spine, plus a 14% impairment for the left lower extremity on the basis of abnormal motion of the left knee. There is no impairment rating on the basis of ACL."[1] No report or other information is attached to this report.

On April 9, 1993, (Dr. Y), at the request of the carrier, completed a TWCC-69 in which he assigned a seven percent IR for the (date of injury), injury and an additional 10% for a prior injury that occurred in 1986 resulting in a fusion at L5-S1. Of the seven percent IR rating for the claimant's present injuries, Dr. Y diagnosed "sprain of the left knee, subsided" and gave a three percent equivalent whole body rating to the knee for loss of range of

[1]Table 36 (Impairment Ratings of the Lower Extremity for Other Disorders of the Knee) of the American Medical Association Guides to the Evaluation of Permanent Impairment, third edition, second printing, February 1989, (Guides) provides an IR range of zero to 15% for anterior cruciate ligament loss when combined with loss of motion.

motion, with no specific disorder of the knee, and four percent for loss of range of motion of the lumbar spine.

The parties agreed at the hearing that (Dr. S) was selected by the Commission as designated doctor in this case to determine MMI and IR. In a TWCC-69 of August 6, 1993, and accompanying narrative report, Dr. S diagnosed chronic lumbosacral sprain with bulging of the L4-L5 disc and mild chondromalacia of the left knee. He also noted the claimant's prior lumbar fusion at L5-S1 was completed "with good results." X-rays of the left knee revealed no fractures, dislocations or "loose bodies." He assigned a seven percent IR consisting of five percent for a specific disorder of the spine and a two percent equivalent whole body rating for the chondromalacia to the knee. He found the results of range of motion testing for the lumbar spine invalid and "normal motion to the left knee."

Also introduced into evidence was a November 19, 1993, report of Dr. B which criticized Dr. S's ratings. In this report, Dr. B confirms his previous IR and notes that the "claimant has significant back and leg problems, . . . and he also may require surgery on his knee. I feel that his impairment rating is certainly higher than the 7%, and I think the 18% accurately represents his impairment."

The only issue on appeal is whether the hearing officer erred in finding that the claimant's correct impairment rating was seven 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 discussed the meaning of "the great weight of the other medical evidence" in numerous previous 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 report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, not even the report of a treating doctor, is accorded the special status given 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 a question of fact. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. The 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. Section 410.165(a). It was for the hearing officer to resolve the inconsistencies and conflicts in the medical evidence presented at the hearing.

Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.], no writ). When reviewing a hearing officer's decision for factual sufficiency, we will 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 Company, 715 S.W.2d 629 (Tex. 1986).

The evidence in this case showed essential agreement among the doctors with regard to the IR assigned to the lumbar spine. Although Dr. S based his lumbar rating on a specific disorder of the spine, not loss of range of motion as had Drs. B and Y, Dr. S nonetheless assigned a higher rating (five percent) than did Drs. B and Y (four percent). As to the rating for the left knee, Dr. Y assigned three percent based on loss of range of motion, while Dr. S assigned two percent based on a specific disorder of the knee. Dr. S found the claimant's range of motion of the left knee normal. Dr. B, whose assigned IR the claimant asserts is correct, assigned 14% for loss of range of motion in the knee. There is no explanation in his report or later critique of Dr. S of how he, Dr. B, arrived at this figure. His November 19, 1993, statement refers to "problems" with the left knee but offers no rating for these problems. It is also unclear from his TWCC-69 whether the 14% impairment rating for the knee was a rating for the lower extremity only, or whether this figure represented the lower extremity rating converted to a whole body rating pursuant to Table 42 of the Guides. If the 14% was a rating of the lower extremity, it would have converted to a six percent whole body IR pursuant to Table 42 of the Guides. We also note that under the combined value chart of the Guides, ratings of 14% and four percent combine to yield a rating of 17%, not 18% as assigned by Dr. B. Having reviewed the record in the case, we conclude that the hearing officer's decision that the great weight of the other medical evidence was not contrary to the report of the designated doctor is supported by sufficient evidence and we will not disturb it on appeal.

We emphasize that our decision in this case should in no way be construed as an approval, tacit or otherwise, of Dr. Y's procedure whereby he separated out an IR for a previous injury in assigning the claimant a current IR. *See* Texas Workers' Compensation Commission Appeal No. 931130, January 26, 1994. The case under consideration does not deal with contribution for a past injury. We have considered Dr. Y's TWCC-69 and narrative solely on the question of whether it constitutes, either singly or in combination

with the other medical evidence, the great weight of the other medical evidence to the contrary. Finding that it does not, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge