APPEAL NO. 941607

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 25, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer to consider the single issue of the appellant's (claimant) correct impairment rating (IR). The hearing officer determined that the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission); is entitled to presumptive weight; that the great weight of other medical evidence was not contrary to the report of the designated doctor; and adopted that doctor's 10% rating, as claimant's IR. Claimant appeals asking that the 20% IR of his treating doctor be adopted by the Commission. Respondent (carrier) requests affirmance, arguing that the claimant has failed to satisfy his burden of proving that the great weight of other medical evidence is contrary to the designated doctor's report concerning IR.

DECISION

We affirm.

It is undisputed that claimant sustained a compensable back injury on (date of injury), and that he reached maximum medical improvement (MMI) for that injury on November 2, 1993, the date certified by claimant's treating doctor, (Dr. G). On a Report of Medical Evaluation (TWCC-69) dated November 9, 1993, Dr. G assessed an IR of 20%; however, Dr. G did not specify the body parts and/or systems that comprise his rating and his TWCC-69 is not accompanied by a narrative report.

The Commission selected (Dr. S) as the designated doctor in this case. On March 10, 1994, Dr. S examined claimant for the purposes of determining his date of MMI and his correct whole body IR. Dr. S certified that claimant reached MMI on November 2, 1993, as had Dr. G, and assessed an IR of 10%. In the narrative report accompanying his TWCC-69, Dr. S stated that claimant was entitled to the 10% under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (Guides) for a surgically treated disc lesion with residual symptoms. Dr. S also noted in his narrative report that "[a]lthough [claimant] has pain, he has full flexion and extension and lateral flexion as well as rotation of the lumbar spine."

Dr. S signed the TWCC-69, but did not sign the narrative report attached to the TWCC-69. The claimant argues that the certification of IR is not valid because the narrative report is not signed. Rule 130.1, in sections (c)(4) and (c)(5) provides that reports on MMI and IR shall be made on a form prescribed by the Commission and shall contain "(4) the doctor's name, address, professional license number, federal tax identification number, and signature;" and "(5) a narrative history of the employee's medical condition(s) . . ." The rule

does not contain any reference to a signature on the attached narrative history. We have held that an unsigned TWCC-69 is not a valid certification of MMI and IR under Rule 130.1(c)(4). Texas Workers' Compensation Commission Appeal No. 92027, decided March 27, 1992. This panel has not required that a narrative report or any other papers attached to a TWCC-69 be signed. However, in Texas Workers' Compensation Commission Appeal No. 93218, decided April 30, 1993, we held that an unsigned TWCC-69 with an expressly incorporated signed narrative report was a valid certification. In the case before us, the signature on the TWCC-69 was sufficient, and the hearing officer did not err in providing presumptive weight to the report of Dr. S.

Under the 1989 Act, a report of a designated doctor is to be accorded presumptive weight, and the Commission shall base its determinations on MMI and IR on that report, unless the great weight of other medical evidence is to the contrary. Sections 408.122(b) and 408.125(e). We have consistently noted the unique position that a designated doctor's report occupies under the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 92495, decided October 28, 1992 and Texas Workers' Compensation Commission Appeal No. 92412 , decided September 28, 1992. Further, we have stated that "it is not just equally balancing evidence or a preponderance of the evidence that can outweigh [a designated doctor's] report but only the `great weight' of the other medical evidence that can overcome it." Appeal No. 92412, *supra*.

The correct IR is a question of fact. Under the 1989 Act, the hearing officer is the sole judge of the relevance and materiality of the evidence offered and the weight and credibility to be given to the evidence. Section 410.165(a). As the finder of fact, the hearing officer is required to resolve the conflicts in the evidence, including the medical evidence and to enter findings of fact and conclusions of law accordingly. Texas Employers Ins. Co. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Texas Workers' Compensation Commission Appeal No. 941436, decided December 7, 1994. The basis of the difference in the ratings of Dr. G and Dr. S is unclear because Dr. G's rating is not broken down into its component parts. We note that in the absence of such information, the claimant's ability to satisfy the difficult burden of showing that the great weight of other medical evidence is contrary to the report of the designated doctor is substantially limited.

After reviewing the medical evidence in this case, we are satisfied that the hearing officer correctly determined that Dr. G's report does not rise to the level of the great weight of other medical evidence contrary to Dr. S's report. Thus, we find no error in the hearing officer's having accorded the designated doctor's report presumptive weight, finding that the great weight of the other medical evidence is not contrary to the report of the designated doctor, and adopting his 10% IR.

The decision and order of the hearing officer are affirmed.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge