APPEAL NO. 94235

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 18, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) reached maximum medical improvement (MMI) on July 30, 1993, with 12% impairment rating as found by the designated doctor, (Dr. M). Claimant asserts that her impairment should be based on the rating of 15% given her by (Dr. A) and that Dr. M should have done all the tests required of him. Carrier replies that the hearing officer should be upheld.

DECISION

We affirm.

Claimant injured her back while working for (employer) as a result of lifting heavy bundles of "jeans" on (date of injury). The record indicates that the ombudsman entered into a stipulation with the carrier that a compensable injury occurred on (date of injury); no issue was taken with this on appeal, and at the hearing, no one contested that a compensable injury took place. Claimant first saw (Dr. S) and then saw (Dr. L). Both doctors were selected by the employer, but claimant chose to continue seeing Dr. L from October 22, 1992, through April 1993. Dr. L certified that claimant reached MMI on April 26, 1993, with 12% impairment. His rating included nine percent for range of motion limitations and three percent for pain.

Claimant testified that she had been sent to (Dr. A) at the end of March 1993, and he found MMI on March 29, 1993, with 15% impairment. His rating was made up of seven percent for her diagnosis and nine percent for her range of motion limitations. A designated doctor, Dr. M, was appointed and found claimant reached MMI on July 26, 1993, with 12% impairment. Claimant favors the rating given by Dr. A, asserting that Dr. M did not do all the range of motion tests that should have been done.

Dr. M gave claimant a rating of 12% based on seven percent for a degenerative disc at the L5 level and five percent for a degenerative disc at the L4 level. No range of motion impairment was assigned; portions of Dr. M's report support his conclusion not to rate range of motion, but other statements made therein were inconclusive at best. A subsequent letter from Dr. M on September 27, 1993, to the Texas Workers' Compensation Commission (Commission) can be read with his report of MMI and impairment rating to assist in explaining his decision to assign no range of motion rating.

Near the end of Dr. M's narrative that accompanies his Report of Medical Evaluation (TWCC-69), appears the sentence, "[e]ven though the range of motion test is valid according to the AMA validity criteria, I have difficulty believing the patient has this much limitation of her motion secondary to pain." Previously, in the same narrative, Dr. M had listed range of motion readings performed in May 1993 that appeared to show limited motion. Immediately thereafter he said, "[s]traight leg raising is noted to be 14 degrees bilaterally.

By the AMA validity criteria this is a valid range of motion test." These statements could support assigning an impairment rating that included an amount for range of motion.

Dr. M also records, however, that claimant:

> refused range of motion measurements because of the severe pain. The patient was able to lie supine on the examination table in physical therapy and straight leg raising is documented by the Cybex inclinometer as 3 degrees on the right and 2 degrees on the left.

These observations are then followed by the point that, "[w]hile seated the patient is noted to have straight leg raising in excess of 80 degrees bilaterally." In addition, Dr. M records that claimant had trouble getting on the table and could not get off the table for 20 to 30 minutes because of pain. He later referred to her "severe and magnifying pain picture."

In his letter of September 27, 1993, Dr. M indicates that the Commission had asked him about his range of motion comments and indicated that he could examine the claimant again. Dr. M then declined that opportunity saying that claimant would not benefit from another examination. He did refer to "multiple inconsistencies during the course of the examination" as the basis for his questioning the amount of pain involved.

Section 3.3e of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (Guides), provides that the results of straight leg raising may invalidate range of motion tests. In addition, Texas Workers' Compensation Commission Appeal No. 94149, decided March 16, 1994, affirmed a decision that included no range of motion rating; the designated doctor there invalidated such rating because of inconsistency between the formal range of motion exam results and observations made of claimant's movements during other parts of the physical examination. In Appeal No. 94149, the designated doctor could quantify the range of motion observed, in addition to the formally measured range of motion, just as Dr. M quantified the "80 degrees" in the case under appeal.

The hearing officer could reasonably conclude from the report and letter of Dr. M that while the claimant did not invalidate the measurements conducted specifically for range of motion, her conduct and movement during other parts of the examination did invalidate any rating for range of motion. There was sufficient evidence to support the finding that the designated doctor's opinion was entitled to presumptive weight and that the great weight of other medical evidence was not contrary thereto.

We observe that a comment in Dr. M's narrative also said claimant "does ambulate in the hall without much difficulty." Also the benefit review officer's report, in the record as Hearing Officer's Exhibit No. 1, indicates in the disputed issue as to impairment rating that Texas Workers' Compensation Commission Appeal No. 93411, decided July 8, 1993, allows no rating for range of motion when "claimant's pain response makes it impossible" to test. Appeal No. 93411 should be read with some consideration given to the fact that it resulted

from a remand for development of medical evidence; it noted the doctor as referring to the claimant's "very exaggerated pain response." The Appeals Panel stated, "[t]he opinion of the designated doctor that pain prevented an accurate range of motion measurement may be subject to contradiction, but such evidence was not forthcoming in this case" (emphasis added) and "[t]he designated doctor's answer to the hearing officer's questions can be viewed as raising another question since the AMA Guides pertaining to hip range of motion do not refer to pain as a basis for not testing." General conclusions drawn from Appeal No. 93411 may not be proven valid themselves.

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge