

APPEAL NO. 94297

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 27, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant (claimant) reached MMI, as stipulated, on January 31, 1993, and that he had an impairment rating (IR) of 13%, as stated by the designated doctor, (Dr. D). Claimant asserts that the IR of his treating doctor, [Dr. S], 24% is correct, points out that additional surgery has been recommended, and complains that the designated doctor assisted him in his bending when evaluating range of motion (ROM). The respondent (carrier) replies that sufficient evidence supports the decision.

DECISION

We affirm.

Claimant was working for (employer) when a pipe struck him across the knees causing him to fall backward landing on his back. This occurred on (date of injury), and from this accident, he hurt his back. He saw (Dr. P), who referred him to Dr. S, an orthopedic surgeon. Dr. S read a myelogram as showing herniation at L3-4 and recommended surgery in June 1991. A suction discectomy was performed on January 9, 1992, to correct the L3-4 problem. Dr. S on April 16, 1993, states that recurrent herniation exists at L3-4; "further surgery is being contemplated." He states that maximum medical improvement (MMI) is "from statutory 104 weeks only," and records an IR of 24%.

The carrier disputed the IR of Dr. S. Claimant testified that he does not want more surgery. On November 10, 1993, Dr. D examined claimant.

Claimant's testimony was through a translator and was somewhat contradictory. He said at one point that Dr. D did not examine him, but he also said that he did. He said that Dr. D used no instrument to measure him, then later said that Dr. D used a "little box" that was put on his back. Claimant said that Dr. D bent him and encouraged him to bend further; he said that he was not asked to raise his leg from a sitting position and did not raise it from a lying position, but that Dr. D lifted his leg from a lying position. He agreed that Dr. D did have him walk in specific ways and measured the length of his legs. He complained that the examination did not take as long as the examinations of Dr. S had.

Dr. D provided a Report of Medical Evaluation (TWCC-69) with seven attached pages of narrative explanation. Dr. D recites a lengthy history of claimant's injury and treatment, along with his current problems, such as difficulty with prolonged sitting. Dr. D comments in detail about his observations of claimant's movement, his appearance, and various tests other than ROM studies. He notes tight hamstring muscles, no radicular pain symptoms, full strength, no sensation deficit, and full reflexes. This doctor does not merely recite that ROM was either valid or invalid, but provides the three measurements made for each test, for example, forward flexion is recorded at 60°, 58°, and 61°. Dr. D then states, "[t]he patient is able to fully forward flex with his lumbar spine parallel to the floor but needs

coaxing." Dr. D recites the test results that were made available for his consideration and concludes that there is evidence of a small recurrent disc protrusion/herniation. He states his exam shows normal neurology "without any signs of lumbosacral radiculopathy, myelopathy, or peripheral neuropathy." Dr. D opined that an exercise program consisting of extension exercises would relieve pain. Dr. D then recites that his IR was done under "the Guides to Permanent Impairment, third edition, second printing, from the American Medical Association." He found three percent for deficits in right and left lateral ROM limitations. His flexion and extension was found to be within "functional limits of normal" and was not rated as impaired. Dr. D also assigned 10% for the specific disorder of surgically treated disc lesion, with residual symptoms. The report appears to be very thorough.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The quality of the report itself could be considered as consistent with Dr. D's assertion that he performed the IR process in accordance with the Guides for the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Dr. D acknowledged "coaxing" the claimant in some testing, but the AMA Guides do not prohibit that; the hearing officer in finding that Dr. D's certification was valid and that the great weight of other medical evidence was not contrary to it, indicates belief in Dr. D's assertions as to his testing of the claimant. Especially in view of some of claimant's contradictory statements, the hearing officer could choose to believe the designated doctor's comments as opposed to contradictory ones from the claimant. See Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied).

Claimant testified that he did not wish to have further surgery so no question as to added impairment for such treatment is raised. In addition, claimant refers to the short time taken by Dr. D in performing his examination. The legislature chose to give presumptive weight to a designated doctor's opinion unless the great weight of other medical evidence was contrary to it; in so doing, neither quantity of evidence nor the time spent with a particular doctor was set forth as a determinative factor. No time standard was imposed upon a designated doctor to warrant the presumption. Absent evidence that the evaluation was inadequate or that the great weight of other medical evidence was contrary to the opinions resulting therefrom, the designated doctor's opinion receives presumptive weight. See Texas Workers' Compensation Commission Appeal No. 93031, dated February 25, 1993.

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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge