

APPEAL NO. 94318

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (city), Texas, on January 20, 1994, (hearing officer) presiding as hearing officer. He determined that the appellant's (claimant) correct impairment rating was seven percent as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). Claimant appeals faulting several of the hearing officer's findings and urging that the 21% rating by her second treating doctor was the correct impairment rating. The respondent (employer/carrier) argues that the evidence is sufficient to support the hearing officer's decision giving presumptive weight to the designated doctor's report.

DECISION

Finding the evidence sufficient to support the determinations of the hearing officer, the decision and order are affirmed.

The fact of the claimant sustaining a compensable back injury on (date of injury), and her reaching maximum medical improvement (MMI) on August 13, 1993, is not in dispute on this appeal. The only matter before us is the correct impairment rating. On April 5, 1993, the claimant's original treating doctor certified that the claimant's impairment rating was eight percent. Claimant disputed this determination and the Commission subsequently appoint a designated doctor who found MMI on August 13, 1993, with a seven percent impairment rating. Apparently in July 1993, the claimant changed treating doctors because, according to her testimony, she was not getting results. She denied that the change was prompted to obtain a new impairment rating, a reason not authorized under Section 408.022(d). The claimant also stated that the designated doctor did not consider a couple of tests in his evaluation, one of which was completed after the designated doctor's report. The medical evidence indicated, and the hearing officer determined, that the diagnostic tests in question did not reveal any significantly new information that previous diagnostic testing had not shown and that one of the tests correlated well with a test that was specifically considered by the designated doctor. The hearing officer determined that the designated doctor's report was not contrary to the great weight of the other medical evidence in the case, and gave the report presumptive weight as provided by Section 408.125(e).

We have held that the designated doctor occupies a unique position under the 1989 Act and that it takes more than a mere balancing of the medical evidence to discount his report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Rather, only when the great weight of the other medical evidence is to the contrary can the designated doctor's report be denied presumptive weight. Not only is there evidence in support of the designated doctor's report as reflected in the original treating doctor's evaluation, the report of the designated doctor took into consideration the other medical reports available to him. Those that were not considered did not contain significant new or different information which would reasonably cause a different rating. To the contrary, the major source of difference involved range of motion testing which the

designated doctor deemed to be invalid. Under the circumstances, we find no basis to conclude that the hearing officer's determination was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Employers Casualty Co. v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). We do not substitute our judgment for that of the hearing officer's where his determinations are supported by sufficient evidence. Texas Workers' Compensation Commission Appeal No. 931148, decided February 1, 1994; Texas Workers' Compensation Commission Appeal No. 93767, decided October 8, 1993.

Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge