APPEAL NO. 94346

In Texas Workers' Compensation Commission Appeal No. 931008, decided December 16, 1993, the Appeals Panel reversed and remanded a decision of the hearing officer, (hearing officer), for further development and consideration of the evidence. In particular, the case was remanded for clarification of the impairment rating assigned to the respondent (claimant) by (Dr. T), the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his decision following the remand, the hearing officer determined that Dr. T's finding that the claimant had a seven percent impairment rating was overcome by the great weight of the other medical evidence, and further determined that the claimant has a 12% impairment rating as found by (Dr. S), the claimant's treating doctor. The hearing officer decided that the claimant is entitled to 36 weeks of impairment income benefits based on the 12% impairment rating. The appellant (carrier) disagrees with the hearing officer's decision and requests that we reverse the decision and remand the case for review by another designated doctor. The claimant requests that we affirm the hearing officer's decision.

DECISION

Affirmed.

The facts of this case are set forth in Appeal No. 931008 and will not be repeated at length in this decision. Succinctly, the claimant injured his neck and right shoulder at work on (date of injury), the parties stipulated that the claimant reached maximum medical improvement (MMI) on November 9, 1992, and Dr. S, the treating doctor, assigned a 12% impairment rating, which the carrier disputed. The Commission selected Dr. T as the designated doctor and he assigned the claimant a seven percent impairment rating. In his decision following the first hearing, the hearing officer determined that the claimant had a seven percent impairment rating based on the report of Dr. T and found that Dr. T's report was not contrary to the great weight of the other medical evidence. The claimant appealed that decision. In reversing and remanding the hearing officer's decision we pointed out that Dr. T had based the impairment rating on a specific disorder of the cervical spine and on decreased range of motion of the right upper extremity; however, Dr. T had also reported that his examination revealed objective findings of decreased range of motion of the cervical spine, but he did not assign any impairment for cervical range of motion. We remanded so that the hearing officer could seek clarification from Dr. T as to the impairment rating he assigned to the claimant.

Upon remand, the hearing officer wrote to Dr. T asking for clarification of the impairment rating and pointing out that it appeared he had not assigned impairment for the loss of range of motion of the cervical spine which he had found. In his response to the hearing officer's letter, Dr. T stated only that he had based the impairment rating on a specific disorder of the cervical spine and on decreased range of motion of the shoulder. He gave no explanation as to why he did not assign impairment for loss of range of motion of the

cervical spine which his examination had revealed. Dr. T reiterated that the claimant had a seven percent impairment rating.

In his decision following remand, the hearing officer found that Dr. T's report on impairment rating was overcome by the great weight of the other medical evidence, and he concluded that the claimant has a 12% impairment rating as reported by Dr. S, the treating doctor.

In its appeal, the carrier asserts that the great weight of the medical evidence is not contrary to the report of the designated doctor, and that the hearing officer had no authority to base the claimant's impairment rating on the report of the treating doctor. The carrier also contends that the hearing officer should have selected another designated doctor to determine the claimant's impairment rating when Dr. T failed to explain the discrepancy in his report.

Pursuant to Section 408.125(e), the report of a designated doctor chosen by the Commission regarding an impairment rating has presumptive weight and the Commission must base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. That section further provides that if the great weight of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the impairment rating of one of the other doctors. We have previously held that it takes more than a preponderance of the evidence to overcome the report of a designated doctor. The great weight of the medical evidence must be contrary to the report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. In regard to impairment of the spine, we have previously observed that "range of motion ratings are one of three factors to be added together to reach an impairment rating in regard to the spine; the other two to consider, and to add together when each has some rating, are the diagnosis based percentage and neurological deficits." Texas Workers' Compensation Commission Appeal No. 93296, decided May 28, 1993. We have held that the great weight of the medical evidence contrary to the designated doctor's finding can include the actual content of the designated doctor's report. *See* Texas Workers' Compensation Commission Appeal No. 92621, decided December 23, 1992.

In the instant case, both Dr. S and Dr. T found that the claimant had decreased range of motion of the cervical spine. Six percent of the 12% impairment rating assigned by Dr. S was for decreased range of motion of the cervical spine; however, despite his objective finding that the claimant had decreased range of motion of the cervical spine, Dr. T assigned no impairment in relation to that finding and, although asked for an explanation for that apparent oversight, Dr. T gave none. Having reviewed the record, we conclude that the hearing officer did not err in finding that Dr. T's assignment of a seven percent impairment rating was contrary to the great weight of the other medical evidence.

As previously noted, Section 408.125(e) provides, in part, that if the great weight of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the impairment rating of one of the other doctors. The only doctor besides Dr. T who assigned an impairment rating was Dr. S. In a Report of Medical Evaluation (TWCC-69), Dr. S assigned a 12% impairment rating and attached a two page narrative report detailing how he arrived at that rating. We conclude that the hearing officer did not err in finding that the claimant had a 12% impairment rating based on the report of Dr. S after having correctly found that the great weight of the medical evidence was contrary to the impairment rating assigned by Dr. T. Contrary to the carrier's assertion on appeal, the carrier was not "entitled" to have another designated doctor appointed by the Commission. *See* Texas Workers' Compensation Commission Appeal No. 93932, decided November 29, 1993, and Texas Workers' Compensation Commission Appeal No. 931106, decided January 11, 1994, for a discussion of the alternatives available to a hearing officer when the designated doctor fails to clarify his or her report when requested to do so by the Commission. The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge