APPEAL NO. 94362

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 16, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. He determined that the respondent's (claimant) compensable injury included a head injury (hydrocephalus) and that in accordance with the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission), the claimant reached maximum medical improvement (MMI) on October 28, 1993, with a 40% impairment rating (IR). The appellant (carrier) appeals arguing that there was insufficient evidence to support the finding on the extent of injuries and that the great weight of the other medical evidence is contrary to the designated doctor's assigned IR. The carrier did not appeal the finding of MMI. There was no response filed by the claimant.

DECISION

We affirm.

There is no dispute that the claimant injured himself in the course and scope of his employment on (date of injury), when he came into contact with a live electrical wire while sawing through a masonry wall. He suffered electrical shock and was severely shaken until a coworker was able to release his hold on the saw. Although, according to the claimant, he felt both back pain and headaches, initial diagnoses by (Dr. BO) in the fall of 1992, and by (Dr. G) in March of 1993, found only lumbar strain and radiculitis. Dr. BO in an undated Report of Medical Evaluation (TWCC-69) assigned an 11% IR based on lumbar disc bulges (six percent) and lumbar radiculopathy (five percent). Dr. G in an undated TWCC-69 assigned, without explanation, a 12% IR for lumbar strain.

The claimant's continuing complaints of headaches, dizziness and memory loss were further evaluated by (Dr. E) and (Dr. P). On May 11, 1993, Dr. E, a neurologist, diagnosed hydrocephalus "etiology unknown," but stated: "I think the current symptomatology is directly related to the hydrocephalus which may, in turn, be secondary to the electrocution injury." The immediate onset of head and neck pain after the shock with the hydrocephalus developing one year later led him to conclude there is a "distinct possibility of coagulation necrosis at the foraminal exit points of the cerebrospinal fluid." A shunt was implanted in May 1993 to drain the excess fluid. While in the hospital for the shunt procedure, the claimant was examined by (Dr. B), who on May 3, 1993, provided a neurologic diagnosis of post-electric shock syndrome with headache and hydrocephalus. His preliminary review indicated to him that the hydrocephalus was not related to the injury, and that the claimant was asymptomatic before the injury. In order to be sure however, he said he could "imagine" this type of change after an electric shock, but would have to review the literature before he could say it was a typical electric shock injury. In a letter of July 27, 1993, Dr. P stated that though he was not "absolutely certain as to the etiology of this man's hydrocephalus," he considered subarachnoid hemorrhage at the time of the "electrocution" as "one plausible theory."

At the request of the carrier, the claimant was examined by (Dr. K), on October 11, 1993. As to the claimant's hydrocephalus, he noted that no symptoms preceded the injury and, from this, "[o]ne has to assume that he developed a communicating hydrocephalus as a result of the blood with shaking from the shock . . . . With the onset of symptoms related to the time of the accident I do not think we can separate out whether the hydrocephalus was pre-existing." Dr. K in a TWCC-69 assigned a zero percent IR.

On November 11, 1993, in a TWCC-69, (Dr. C), a Commission-selected designated doctor, examined the claimant. It was his opinion, based on his examination, a review of past treatment records which contained objective medical evidence of the existence of hydrocephalus and a review of the medical literature quoted at length in his report that "to a reasonable degree of medical certainty, the occupation injury reported and the injury seen (herniated nucleus pulposus of the lumbar spine and hydrocephalus) are probably related." He assigned an IR of 15% to the brain and 14% to the lumbar spine for a total IR of 27%. On December 21, 1993, he amended his TWCC-69 to add a 16% IR for the cervical spine (loss of range of motion and a specific disorder), which he combined with his previous 27% for a total IR of 40%.

In its appeal of the hearing officer's finding that the claimant's head injury was the result of his (date of injury), accident, the carrier refers to various opinions of treating and examining doctors, substantially set out above, that the etiology of the hydrocephalus is either unknown or not related to the accident. While conceding that all of the doctors indicated the presence of hydrocephalus, the carrier contends that only Dr. C "made the quantum leap" to find it work related. The Appeals Panel has held that an aggravation of a pre-existing condition can be a compensable injury in its own right. Texas Workers' Compensation Commission Appeal No. 94066, decided February 25, 1994. *See generally*, INA of Texas v. Howeth, 755 S.W.2d 534 (Tex. App.-Houston [1st Dist.] 1988, no writ.) Whether the claimant's accident caused the hydrocephalus or aggravated a pre-existing asymptomatic hydrocephalus is a question of fact. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility and the inferences to be drawn therefrom. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). The expert evidence in this case, though in conflict, was not as one sided as the carrier suggests. The statement of Dr. K that he did not think "we can separate out whether the hydrocephalus was pre-existing," could be interpreted as meaning that Dr. K simply could not say that the hydrocephalus pre-existed the injury and not that he was saying the hydrocephalus was not caused by the

injury. There was also evidence that Dr. BO revised his earlier opinion when in a Specific and Subsequent Medical Report (TWCC-64) of January 20, 1994, he said he failed to include the headaches and hydrocephalus in his earlier TWCC-69. Doing so he said, would "increase the disability." Dr. B conditioned his conclusion that the hydrocephalus was not caused by the accident on a further review of the literature which he admitted he had not done. Dr. C, on the other hand, had the benefit of not only an examination of the claimant, but also of previous opinions and tests and the existing literature on the causal connection. He gave a comprehensive, reasoned conclusion that the injury caused the hydrocephalus. We will not substitute our judgment for that of the hearing officer on this issue where, as here, the finding is support by sufficient evidence.

The carrier next argues that once the impairment rating for the hydrocephalus is removed from Dr. C's TWCC-69, the correct IR should be the 12% given by Dr. G in a TWCC-69 of March 3, 1993, which, according to the carrier, is "close" to Dr. C's IR minus the rating for the hydrocephalus. Having affirmed the decision of the hearing officer that the hydrocephalus was part of the injury, we find no merit in the claimant's attempt to discount Dr. C's IR. We would only note that Dr. C assigned a 12% IR to the cervical injury and a 14% to the lumbar injury. Dr. G[1] originally assigned a 12% IR to the lumbar injury, but later in a letter of February 1, 1994, which was in evidence at the hearing, concluded that "I would not disagree with [Dr. C's] evaluation regarding his cervical spine and that should be included in [claimant's] impairment evaluation." Thus, according to Dr. G, his originally assigned IR was no longer valid and although he conceded that an additional rating should be given for the cervical injury, he did not provide such a rating. Similarly, Dr. BO concedes that his originally assigned IR of 11% for injury to the lumbar spine improperly excluded consideration of range of motion deficits of the lumbar spine and the hydrocephalus. When included, these injuries would have increased the IR "to at least 27%." Under these circumstances, we do not conclude that the original TWCC-69 of Dr. G, or that of Dr. BO, either separately or together with the other medical evidence constitutes the great weight of the other medical evidence contrary to the report of Dr. C. *See* Section 408.125(e).

[1]Although not raised by the parties, we note that Dr. G did not use the version of the Guides mandated by Section 408.124(b). *See* Texas Workers' Compensation Commission Appeal No. 92393, decided September 17, 1992.

Finding the evidence sufficient to support the hearing officer's decision and order, we affirm.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge