APPEAL NUMBER 94979
FILED SEPTEMBER 6, 1994

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 13, 1994, a contested case hearing was held in (City), Texas, with (hearing officer) presiding. The issues were whether claimant, who is the appellant, sustained a compensable injury to his right shoulder in addition to the right hand injury he sustained _____; whether he had disability any period after the date of his injury; whether he had reached maximum medical improvement (MMI), and, if so, when; and his correct impairment rating.

The hearing officer determined that claimant had not injured his shoulder at the same time he injured his right hand; that he had reached MMI on February 9, 1993, with a zero percent impairment rating, in accordance with the designated doctor's report; and that he had disability from his injury for intermittent periods of time between the date of his injury and the date he reached MMI.

The claimant appeals only the part of the decision relating to the impairment rating assigned by the designated doctor, stating that he does not believe it is fair because it does not take into account the full extent of injuries to his hand and his shoulder. No response was filed.

DECISION

We affirm the hearing officer's decision and order.

The claimant injured his right hand on _____, in the course and scope of his employment with (employer). He said that he performed general carpentry and construction work for his employer, and had been employed three to four months prior to the date of injury. His hand was mashed between a trailer tongue and the bumper of a truck. Claimant's first doctor, Dr. R, determined there was no fracture and diagnosed a contusion to the hand. On October 2, 1991, Dr. R referred him to an orthopedic surgeon, Dr. G, because of continued hand pain. Dr. R's records do not document any complaints of shoulder pain.

After testing, Dr. G found no evidence of nerve-related damage or carpal tunnel syndrome. Dr. G eventually told claimant he could return to work in December 1991. After reviewing Dr. G's reports, Dr. R determined that claimant reached MMI on December 16, 1991, with a zero percent impairment rating.

Other records indicated that claimant was in the care of Dr. M in November 1992, complaining of hand and wrist pain. The shoulder is not noted on Dr. M's report. The first notation about shoulder pain in Dr. M's records showed up on his report of January 21, 1993. Dr. M's March 12, 1993, report stated that claimant could return to work.

Because of his dissatisfaction with Dr. G's opinion that he could return to work, claimant said he sought treatment from Dr. S, whom he said told him his right shoulder problem was related to his hand injury. Records in evidence indicated that claimant saw Dr. S beginning in July 1992, and indicated that he had hand and wrist pain that occasionally radiated to his shoulder. More active shoulder pain is documented in November 1992. Dr. S found that claimant reached MMI on September 22, 1993, with a 25% impairment rating, apportioned between claimant's hand and his right shoulder.

Claimant said he had disputed Dr. R's zero percent impairment rating and a designated doctor, Dr. K, was appointed by the Texas Workers' Compensation Commission (Commission). He examined claimant and determined that he had reached MMI on February 9, 1993, with a zero percent "disability" rating. Claimant said that he told them about the fact that his right shoulder had begun to hurt, but that Dr. K said nothing. Dr. K's report indicated that claimant had no shoulder impingement, and he commented that the most common form of tendinitis is in the upper extremity in the shoulder area. The hearing officer clarified upon reopening the record that Dr. K's rating was for impairment, was in conformity with the required version of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), and that no residual impairment of the shoulder was present.

The report of a Commission-appointed designated doctor is given presumptive weight. TEX. LAB. CODE ANN. §§ 408.122(b), 408.125(e). The amount of evidence needed to overcome the presumption, a "great weight," is more than a preponderance, which would be only greater than 50%. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We believe that the evidence in this case sufficiently supports the hearing officer's decision, and Dr. S's opinion alone does not constitute a "great weight" of medical evidence against the designated doctor's report.

We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge