

APPEAL NO. 950007
FILED FEBRUARY 14, 1995

On November 1, 1994, a contested case hearing was held. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the hearing were: (1) the impairment rating (IR) of the appellant (claimant); and (2) contribution for a prior compensable injury. The claimant disagrees with the hearing officer's decision that she has a 14% IR as assigned by the designated doctor and that the respondent (carrier), a self-insured political subdivision of the State of Texas, may reduce her future income benefits by 64% to account for contribution from a prior compensable injury. The carrier requests affirmance.

DECISION

Affirmed.

The claimant fell on her right side while sweeping at work on _____, and on _____, her right leg struck a dolly that had been left in a hallway at work. The hearing concerned the IR for the 1992 injury and contribution for the 1991 injury. She treated with several doctors, including (Dr. SA), who reported in a Report of Medical Evaluation (TWCC-69) dated August 24, 1993, that in regard to the injury of _____, the claimant reached maximum medical improvement (MMI) on August 24, 1993, with a nine percent IR for impairment of the right lower extremity (ankle and knee). The claimant testified that she was paid impairment income benefits (IIBS) based on the nine percent IR. In a TWCC-69 dated February 17, 1994, Dr. SA reported in regard to the injury of _____, that the claimant reached MMI on February 21, 1994, with a 16% IR due to impairment of the right lower extremity (knee, hip, and vascular disease). The claimant testified that the Texas Workers' Compensation Commission (Commission) appointed (Dr. SI) as the designated doctor. In a TWCC-69 dated June 29, 1994, Dr. SI reported that in regard to the injury of _____, the claimant reached MMI on February 21, 1994 (as was reported by Dr. SA), with a 14% IR for impairment of the right lower extremity (ankle, knee, and hip).

Dr. SI stated that he did not consider contribution for the prior compensable injury, which, as he correctly noted, was for the Commission to determine.

In regard to the IR issue, the hearing officer determined that the great weight of the other medical evidence was not contrary to the 14% IR assigned by Dr. SI, the designated doctor, and that the claimant has a 14% IR. The claimant asserts that she has a 16% IR as assigned by Dr. SA. Section 408.125(e) provides that, if the designated doctor is chosen by the Commission the report of the designated doctor shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. We have previously held that it is not just equally balancing evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is

accorded the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should 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 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 941010, decided September 8, 1994. We conclude that the hearing officer's decision that the claimant has a 14% IR is supported by sufficient evidence and is not contrary to the overwhelming weight of the evidence.

Concerning the contribution issue, Section 408.084(a) provides that at the request of the insurance carrier, the Commission may order that IBS and supplemental income benefits be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries, and Section 408.084(b) provides that the Commission shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section. The hearing officer found that the claimant injured her right leg while working for the employer in April 1991 and that her current treating doctor, Dr. SA, assigned her a nine percent IR for that compensable injury. She concluded that the carrier may reduce the claimant's future income benefits by 64% for contribution from the prior compensable injury. We conclude that the hearing officer's determination regarding contribution for the prior compensable injury is supported by sufficient evidence and is not contrary to the overwhelming weight of the evidence.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge