

APPEAL NO. 950059  
FILED FEBRUARY 22, 1995

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held on November 7, 1994. The hearing officer determined that the appellant's (claimant) impairment rating (IR) was 13% as certified by the Texas Workers' Compensation (Commission)-selected designated doctor. The claimant appeals that the great weight of evidence is to the contrary of the designated doctor's report and urges that the 23% rating of the claimant's treating doctor be awarded. The respondent (carrier) urges that there is sufficient evidence to support the determination of the hearing officer in accepting the designated doctor's report and that it was not overcome by the great weight of contrary medical evidence.

DECISION

Affirmed.

According to the claimant, he sustained an injury to his back at work while unplugging a carpet cleaning machine on \_\_\_\_\_, and when he leaned over while at work the following day. In any event, he pursued a non-surgical treatment course over the ensuing months. Also, there was evidence that the claimant had been in an automobile accident in March of 1993 and that he hit his head and injured his lower back. He testified that he had migraine headaches following the automobile accident. The claimant also testified that he still has pain in his back, neck, and has headaches.

Dr. B, the claimant's treating doctor for both the automobile accident and the work injury, diagnosed migraine headaches, temporomandibular joint dysfunction (TMJ), and cervical, thoracic, and lumbar strain and disc disease. In a report dated April 5, 1994, he assessed a 23% IR. The claimant had also been examined by a carrier-selected doctor, Dr. H (Dr. H) who in a Report of Medical Evaluation (TWCC Form-69) dated March 16, 1994, certified an IR of seven percent. A Commission-selected designated doctor, Dr. H (Dr. H), examined the claimant and the medical records on August 1, 1994, and in a four page report certified an IR of 13%. Claimant argued at the hearing on this appeal that the designated doctor did not give any impairment for degenerative disc disease at L4-5 and L5-S1 or for TMJ or migraine headaches and therefore his treating doctor's report should be used.

The hearing officer determined that the designated doctor gave the claimant a complete evaluation and that his report was not overcome by the great weight of the other medical evidence. Our review of Dr. H's report discloses that he noted the claimant continues to have headaches, that the TMJ joint "motion reveals no palpable pop or grind," and that the "lumbar spine exam is within normal limits." It is apparent that Dr. H did not feel in his medical judgment that any rating for permanent impairment was warranted or appropriate for those conditions. His report does show compliance with the Guides to the

Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Under the circumstances, the difference in the report of the treating doctor and the designated doctor amounts to no more than a difference in medical opinion: an insufficient basis to discard a designated doctor's report. Texas Workers' Compensation Commission Appeal No. 941675, decided January 27, 1995; Texas Workers' Compensation Commission Appeal No. 94839, decided August 11, 1994; Texas Workers' Compensation Commission Appeal No. 94034, decided February 10, 1994. Whether the great weight of other medical evidence is contrary to the designated doctor's report is normally a question of fact for the fact finder (Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993) based upon medical and not lay testimony. Texas Workers' Compensation Commission Appeal No. 93442, decided July 9, 1993. We find no basis to conclude that the hearing officer's findings and conclusions were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). To the contrary, they are sufficiently supported by the evidence. Accordingly, the decision and order are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge