

APPEAL NO. 960034
FILED FEBRUARY 5, 1996

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 30, 1995. She determined that the claimant's correct impairment rating (IR) was four percent in accordance with the certification of a Texas Workers' Compensation Commission (Commission)-selected designated doctor. The appellant (claimant) disagrees with the designated doctor's IR largely because it invalidated range of motion (ROM) deficits that her treating doctor had assessed and did so on observations that were inconsistent with the ROM ratings. She asks that she be given another evaluation. The respondent (carrier) urges that the designated doctor's opinion has not been overcome by contrary medical evidence, that it is entitled to presumptive weight and, consequently, the decision should be affirmed.

DECISION

Affirmed.

The claimant, an assembler, testified that she injured her hand, shoulder, and neck on _____. It appears that the injury was of a repetitive trauma nature and the fact of an injury is not in dispute. An MRI indicated some disc bulging in the cervical area and the claimant underwent a course of conservative treatment. Her treating doctor ultimately assessed a maximum medical improvement (MMI) date of February 3, 1995, with a 12% IR which included ROM deficits. She was also seen by a required medical examination doctor who assessed an eight percent IR. The claimant was examined by a Commission-selected designated doctor, Dr. S (Dr. S), on February 24, 1995, who certified MMI on February 3, 1995, and assessed a four percent IR. Because of a desire for clarification, the benefit review officer wrote to Dr. S who, in a letter dated July 20, 1995, explained his methodology referencing the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), and adhered to his four percent IR, noting that he observed movements so inconsistent with the measured motions that he discounted the values. The treating doctor subsequently reviewed Dr. S's assessment, and, while he expressed disagreement since he did not observe any disparity in the measurements and observations, stated that he was not saying that Dr. S was wrong but that different invalidity observations had been experienced.

The hearing officer determined that Dr. S's IR was not overcome by the great weight of other medical evidence and found the IR to be four percent. Section 408.125(e) provides that a designated doctor's report has presumptive weight and that the IR will be based on that report unless the great weight of the other medical evidence is to the contrary. Early on, we pointed out the unique position occupied by a designated doctor and the fact that it takes more than a mere balancing of medical evidence to overcome his

report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also observed that it is not uncommon for doctors to have differences of opinion and that a mere difference of medical opinion is not a basis to discard a designated doctor's report. Texas Workers' Compensation Commission Appeal No. 950161, decided March 14, 1995. The designated doctor in this case set out his reasoning for discounting the ROM measurements, namely, that they were significantly inconsistent with his observations of motion by the claimant. This, we have held, can be a proper basis to invalidate ROM deficits. Texas Workers' Compensation Commission Appeal No. 951768, decided December 8, 1995; Texas Workers' Compensation Commission Appeal No. 94149, decided March 16, 1994. Finding no error and sufficient evidence to support the hearing officer's determinations, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Judy L. Stephens
Appeals Judge