APPEAL NO. 960360
FILED APRIL 3, 1996

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 17, 1996, a hearing was held. He (the hearing officer) determined that appellant (claimant) had 13% impairment (IR) based on the opinion of the designated doctor. (The claimant was considered to have reached statutory maximum medical improvement (MMI) on August 15, 1994, from her injury on _____.) Claimant asserts that the 13% IR should not have been chosen by the hearing officer, saying that the designated doctor did not follow the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

Claimant had worked in the bakery of an (employer) for over two years when she noticed pain on _____. On that date she was working with doughnuts (glazing doughnuts) which she had been doing for some unspecified period during her two years of work. She noticed a feeling like a shock in her arms and also neck pain. She was diagnosed as having a neck sprain and carpal tunnel syndrome.

According to medical records in evidence, claimant had surgery for carpal tunnel syndrome on the left on December 9, 1992, for ulnar nerve transposition in July 1993, for carpal tunnel syndrome on the right on December 8, 1993, for removing the left cervical rib on March 21, 1994, and for removing the right cervical rib on May 21, 1994. After MMI on August 15, 1994, claimant was provided an IR of 10% by (rehabilitation clinic) on April 18, 1995. The worksheets for that IR contained entries for both the left and right upper extremity showing "results inconsistent" for peripheral nervous system impairment. Claimant's treating doctor, Dr. H, then provided an IR on July 14, 1995, which assigned a 24% IR. His rating consisted of nine percent for a specific cervical disorder and 17% for the two upper extremities based on "30-60% decreased sensation with/without pain, interfering with activity," referencing Table 10 of Chapter 3 of the AMA Guides.

The Texas Workers' Compensation Commission (Commission) appointed a designated doctor, Dr. S, to determine the IR. He examined claimant on August 2, 1995, and assigned an IR of 13%. His IR was based on four percent from Table 49 for a cervical condition with no surgery. He found an eight percent IR for limitations of cervical range of motion and one percent for the right wrist. Dr. S specifically noted Dr. H's rating for loss of sensation, but said that his testing found normal discrimination so he documented no loss.

Dr. H, after receiving a copy of Dr. S's IR, commented that Dr. S was correct as to the four percent for cervical specific disorder rather than the nine percent he had given, because the rib removals were not surgeries to the spine. He acknowledged that Dr. S

said that he could find no loss of sensation but added, "but he does not mention that the patient complains of constant pain. It was on the basis of pain and discomfort that I made my award for the upper extremities. . . . "In making the above comments, Dr. H states he was referring to Table 10. Table 10 describes six different levels of impairment. In five of those levels, pain is referenced, but only after the words "decreased sensation" appear; the one level that does not list "decreased sensation" is the initial level on the chart, which calls for a zero percent IR. As stated, Dr. S specifically found no decrease in sensation.

The benefit review officer wrote to Dr. S and sent him more records for review. Dr. S replied that he considered the records and reviewed his prior IR; he commented that the records were graphic but contained nothing to cause him to change his opinion as to claimant's current IR.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He is enjoined by Section 408.125 to give presumptive weight to the IR of the designated doctor unless the great weight of other medical evidence is to the contrary. In determining whether the great weight was contrary to Dr. S's opinion, he could consider that no medical evidence was presented indicating that Dr. H could disregard the words "decreased sensation" preceding each reference to pain in Table 10 and in so doing assign an IR of "30-60%" for pain and discomfort. He could also interpret Table 10 to allow Dr. S to assign no IR when he could find no decreased sensation, as that doctor so stated. The evidence does not show that Dr. S did not follow the AMA Guides. With the only other IR in evidence finding 10% IR and with Dr. H's IR subject to question, both as to the amount given for a specific disorder of the neck and as to whether an amount had been given for pain without loss of sensation, the finding that the IR of Dr. S was not contrary to the great weight of other medical evidence was sufficiently supported by the evidence.

The decision and order are sufficiently supported by the evidence and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Alan C. Ernst
Appeals Judge