APPEAL NO. 980055

This appeal arises 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 14, 1997. On the single issue before her, the hearing officer determined that the respondent's (claimant) impairment rating (IR) was 18% as certified by a designated doctor. The appellant (carrier) appeals urging that two of the hearing officer's findings of fact and conclusions of law that the IR was 18% are not supported by the evidence and that the overwhelming weight of the evidence established that the designated doctor's report was invalid or contrary to the great weight of other medical evidence. No response has been filed.

DECISION

Affirmed.

The claimant sustained a compensable back injury on (injury date 1), was out of work for approximately a year, returned to work with a different employer sometime in 1995, and reinjured his back on (injury date 2). An IR had not been established for the 1994 injury at the time of the 1995 injury. The claimant's treating doctor for the 1994 injury issued a certification showing maximum medical improvement (MMI) on January 26, 1996, with a seven percent IR. Apparently because of a dispute, a Texas Workers' Compensation Commission (Commission)-selected designed doctor, (Dr. W), examined the claimant for the 1994 injury on March 19, 1996, issued a report with measurements, certified the claimant to have reached statutory MMI for the 1994 injury, and assessed an 18% IR. On August 29, 1996, the Commission wrote to Dr. W and asked if his March 19, 1996, certification included both the 1994 and 1995 injuries, and if so, an assessment was needed for the 1994 injury only. Dr. W responded on September 11, 1996, that his certification was for the 1994 injury, that the 1995 injury did not add to the impairment, and that he did not feel any reexamination was necessary. The carrier caused a peer review of the medial records and ratings to be done by (Dr. B), who issued a report dated October 4, 1996, and which faults Dr. W's ratings, methodology, and opines that it was not in accord with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). In a December 12, 1996, letter, Dr. W states he has reviewed copies of the peer review report, noted that Dr. B had not examined the claimant, and explains a comment about a muscle spasm, and states that he believes his IR to be valid.

The carrier introduced two other medical reports that are concerned with certifications of MMI and IR regarding the second or 1995 injury. (Dr. S), a designated doctor for the 1995 injury certified that the claimant reached MMI on June 25, 1996, for this injury with a seven percent IR. (Dr. C), reviewed the medical records together with the certification of Dr. S and in response to the question posed to him by the carrier, opined

that the contribution from the prior injury had not been appropriately addressed in Dr. S's report. In his report, Dr. C also criticizes Dr. W's report certifying the 18% IR and asserts error in his range of motion calculation.

Clearly, there was a divergence of medical opinion concerning the claimant's IR for the 1994 injury, with assertions of incorrect consideration of the effect of the two different injuries among the doctors, erroneous application of the AMA Guides, and validity of the testing and assessment of impairment. As indicated, the Commission-selected designated doctor, Dr. W, examined the claimant, rendered a report setting out his assessment, responded twice to questions and concerns over his rating and his factoring in the effects of the two injuries and his assessment of impairment. Fulfilling her authority and responsibility to resolve conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165(a)), the hearing officer found that Dr. W's IR was valid and entitled to presumptive weight and that the great weight of other medical evidence was not contrary to his report. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Section 408.125. Conflicts in medical opinion are not uncommon and as a way of assisting the resolution of such conflicts, the unique position of "designated doctor" was created in the 1989 Act with presumptive weight being accorded such doctor's opinion. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. The hearing officer determined that the report of Dr. W was entitled to presumptive weight and concluded the claimant's IR to be 18% for the 1994 injury in accordance with his report. We do not find that her determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge