APPEAL NO. 980081

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 24, 1997. With regard to the issues at the CCH, she (hearing officer) determined that the appellant (claimant) reached maximum medical improvement (MMI) on September 26, 1996, with a one percent impairment rating (IR), as certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor, (Dr. R). The claimant appeals, seeks a reversal of the decision and argues that her IR is 14%, as certified by her treating doctor, (Dr. H). The respondent (carrier) responds and seeks an affirmance of the decision.

DECISION

We affirm.

The parties stipulated that the claimant sustained a compensable injury on _____, that the carrier-selected required medical examination doctor, (Dr. X), certified her at MMI on September 20, 1996, with a four percent IR, that Dr. R certified her at MMI on September 26, 1996, with a one percent IR and that Dr. H certified her at MMI on January 14, 1997, with a 14% IR. The claimant testified at the CCH that she developed carpal tunnel syndrome (CTS) in both hands while sewing clothes for the Company (employer). On April 18, 1996, (Dr. A) performed a right carpal tunnel release surgery. In the report attached to his Report of Medical Evaluation (TWCC-69), Dr. R stated that the claimant "recovered from her carpal tunnel surgery and has no other objectively determined impairment relating to her work." On July 29, 1997, Dr. A interpreted an electromyography (EMG) and opined that the claimant still had right CTS. On August 13, 1997, Dr. R stated he did not dispute Dr. A's EMG interpretation but felt the EMG did not change the date of MMI or IR. Dr. R assessed one percent impairment based on range of motion (ROM) limitations, while Dr. H added impairment for pain with impairment for ROM.

The report of the designated doctor has presumptive weight, and the Commission shall base its determinations as to whether an employee has reached MMI and as to the IR on that report "unless the great weight of the other medical evidence is to the contrary." Section 408.125(e). The presumption afforded the designated doctor's report and certification of MMI and IR is not rebutted "absent a substantial basis to do so." Texas Workers' Compensation Commission Appeal No. 950561, decided May 22, 1995, citing Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993. Whether the party challenging a designated doctor's report has produced the great weight of other medical evidence contrary to the report and whether the presumption afforded to the report is rebutted is a question of fact for the hearing officer. Appeal No. 950561, *supra*.

The contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The claimant argues that Dr. H's certification deserves more weight than Dr. R's because Dr. H is her treating doctor and because he recommends further surgery. Dr. R responded to the Commission's inquiries and stated that his certification was correct, according to the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The hearing officer, in the "Statement of the Evidence" portion of the decision, stated that Dr. R and Dr. H had a difference of opinion, which was not a sufficient reason to find that Dr. R's report is contrary to the great weight of the other medical evidence. We agree. A mere difference of medical opinion is not enough to overcome the presumption afforded the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996. It is possible for several physicians to evaluate an employee according to the AMA Guides, apply the AMA Guides to their evaluation results and derive differing IRs.

We will not substitute our judgment for that of the hearing officer when the determination is not 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We conclude that the determinations that Dr. R's report is not contrary to the great weight of the other medical evidence and that the claimant reached MMI on September 26, 1996, with a one percent IR are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge