

## APPEAL NO. 990186

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 December 4, 1998. She (hearing officer) determined that report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor, Dr. F, is contrary to the great weight of the other medical evidence and that Dr. F 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). The hearing officer determined that the designated doctor's reports are not entitled to presumptive weight and that the impairment rating (IR) of the appellant (claimant) is 11%, as certified by Dr. L. Claimant appeals, contending that Dr. L did not rate his entire injury, that the hearing officer erred in rejecting the designated doctor's report, and that the hearing officer did not detail the reasons why she rejected the designated doctor's reports. She also asserts that, if the designated doctor's report is not selected, then the hearing officer should find that her IR is 19%, in accordance with the report of Dr. C, a doctor who examined claimant after referral from claimant's treating doctor. Respondent (carrier) replies that the Appeals Panel should affirm the hearing officer's decision and order.

### DECISION

We reverse and remand.

Claimant contends the hearing officer erred in rejecting the report of the designated doctor and in determining that her IR is 11%, in accordance with the report of Dr. L. Claimant complains that the hearing officer did not detail the evidence relevant to why she rejected the designated doctor's report. Claimant also contends that Dr. L did not rate her entire injury because he did not include impairment for her neck injury.

The report of a Commission-selected designated doctor is given presumptive weight with regard to maximum medical improvement (MMI) status and IR. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption is the "great weight" of the other medical evidence. See Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. See Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992.

A designated doctor should not be replaced by a second designated doctor absent a substantial basis to do so. Normally, the appointment of a second designated doctor is appropriate only in those cases where the first designated doctor is unable or unwilling to comply with the required AMA Guides or requests from the Commission for clarification or if he or she otherwise compromises the impartiality demanded of the designated doctor. Texas Workers' Compensation Commission Appeal No. 961228, decided August 8, 1996.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, 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 or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that he sustained a compensable injury on \_\_\_\_\_, when he fell off a ladder, injuring his back, neck, left wrist, and left knee. He said he did not have spinal surgery, but that he did have surgery on his knee. Claimant said he is still receiving treatment and that he has not yet returned to work.

In his first report, the designated doctor noted that claimant had impairment for his back and for his knee, which had been treated by arthroscopy and partial medial meniscectomy. In this report, the designated doctor stated that claimant's IR is 37%, which included: (1) seven percent impairment for specific disorders of the lumbar spine; (2) 22% for loss of lumbar range of motion (ROM); and (3) 14% impairment for the knee, which included impairment for loss of ROM and specific disorders.

In a June 10, 1998, report, Carrier's independent medical examination doctor, Dr. CO, stated that the designated doctor's report is unacceptable. Dr. CO criticized the designated doctor's report, noting that: (1) the ROM measurements were not "humanly possible"; (2) the designated doctor found that claimant's sacral motion exceeded his T12 motion, which "is not possible"; (3) in measuring right lateral flexion, the designated doctor found that the T12 motion was 3E in one direction, with the sacrum moving 2E in the opposite direction, which "is not a possible motion"; (4) the straight leg raise (SLR) validity test was not met; (5) impairment of seven percent for specific disorders was not appropriate because claimant did not have a herniated disc, but only a disc bulge; (6) the designated doctor did not properly measure claimant's ROM in the knee because he did not measure claimant in the neutral and sitting position and did not measure the contralateral joint; and (7) the ROM losses found by the designated doctor in the knee "cannot be corroborated by the pathology" in the knee. On July 7, 1998, a Commission benefit review officer sent Dr. CO's report to the designated doctor and inquired generally whether the designated doctor's opinion changed. No specific questions were asked of the designated doctor. On July 20, 1998, the designated doctor replied that: (1) he reexamined claimant; (2) he believed claimant did have a herniation under Table 49; (3) "although the MRI report does not specifically say herniated nucleus pulposus, it does say disc bulge, which can be one in the same"; and (4) claimant's IR is now certified as 29%, as opposed to the 37% found on earlier examination. The designated doctor signed a second Report of Medical Evaluation (TWCC-69) certifying a 29% IR on July 20, 1998, and attached a report with related worksheets. The difference between the designated doctor's two IRs was that the impairment for ROM loss declined from 22% to eight percent. On August 7, 1998, Dr. CO issued a report critical of the designated doctor's second report. Dr. CO's criticisms were

the same as in his earlier report, except that he specifically criticized the amended ROM measurements found by the designated doctor in his second report. Dr. CO stated that claimant's SLR test reflected a ROM that, if correct, would indicate that claimant could not walk. Dr. CO suggested that the Commission ask the designated doctor several questions regarding how the designated doctor conducted SLR testing; at what point the SLR test was stopped; how it was determined that the SLR test should stop at 17E on the left; how, from a pathological standpoint, a 17E SLR is possible; the methodology used to measure ROM in claimant's knee; and what pathology results in the extreme ROM losses in claimant's knee.

The other IR reports in the record were from Dr. C and Dr. L. In his April 7, 1998, report, Dr. L certified an 11% IR, which included impairment for claimant's left knee and lumbar spine. The lumbar spine impairment included five percent for specific disorders and three percent for loss of ROM. Dr. L said claimant had a "minor bulging disc" in this lumbar spine. Dr. L examined claimant's neck and measured the cervical ROM, but did not note any impairment or loss of ROM. In his October 5, 1998, report, Dr. C's 19% IR included impairment for specific disorders of the cervical spine and lumbar spine, loss of ROM in the lumbar spine, and neurological impairment of the knee. Dr. C invalidated part of the lumbar ROM based on the SLR test. Although his worksheets indicate that claimant had some loss of cervical ROM, he did not include any impairment in that regard.

In the decision and order, the hearing officer noted the assertions and arguments of each party. The hearing officer noted the testimony of Dr. CO regarding the alleged errors in the designated doctor's report. However, the hearing officer did not explain in what ways the designated doctor's report was deficient or make specific findings in that regard. The hearing officer determined that, in both reports, the designated doctor "failed to properly follow the AMA Guides" and that "the great weight of the other medical evidence is contrary to" the designated doctor's certification of MMI and IR.

The hearing officer's decision makes no attempt to explain just how either report from the designated doctor is against the great weight of the other medical evidence or in which respects it is invalid. The Appeals Panel has required that hearing officers who reject the report of a designated doctor must detail the medical evidence which constitutes the great weight of the contrary medical evidence. Texas Workers' Compensation Commission Appeal No. 93123, decided April 5, 1993. Therefore, we must remand for further explanation and findings in that regard. We also note that the designated doctor was not asked specific questions regarding any possible defects in his report or failure to follow the AMA Guides. We also remand this case for the hearing officer to ask the designated doctor: (1) whether, regarding claimant's knee, he measured the contralateral joint and also tested the knee in both the neutral and sitting positions; (2) whether the great variations in ROM testing for lumbar flexion and extension found by the designated doctor affected his opinion regarding validity of the ROM measurements; (3) whether the variations between T12 and sacral ROM regarding the lumbar extension measurements affected his opinion regarding the validity of the ROM measurements; (4) whether the SLR test results of 15, 15, and 17 on the left correlate with the designated doctor's findings regarding whether claimant was able to walk; and (5) whether the designated doctor viewed

the MRI films and on what basis he found a lesion justifying seven percent impairment under Table 49.

We reverse the hearing officer's decision and order and remand for proceedings consistent with this decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Judy Stephens  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge