

APPEAL NO. 990227

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 30, 1998, a hearing was held. She (hearing officer) determined that the appellant's (claimant) impairment rating (IR) is 14% as set forth by the designated doctor, Dr. C. Claimant asserts that the IR should not be that assigned by the designated doctor because he did not properly examine her, stating that his range of motion (ROM) test was invalid because "he raised the claimant's legs during the straight leg raising test [SLR]"; claimant cited Dr. P, her treating doctor, for this assertion of invalidity. Respondent (carrier) replied that the decision should be affirmed.

DECISION

Affirmed.

Claimant worked for (employer) on _____, when, she testified, she lifted a box of computer paper and felt pain in her low back and right leg. She named Dr. M, D.C., and Dr. P as two of the doctors she has seen. She also stated that she has had surgery two times and still has radiculopathy. She testified that she complained of Dr. C's examination, indicating that he raised her leg and she screamed out, "you're hurting me." She also thought that Dr. C had used the wrong part of Table 49, Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Claimant stated that Dr. P's IR of 24% was more accurate. At the hearing, claimant argued two points in regard to the manner of Dr. C's rating: (1) there was no "motor sensory" deficit assigned, and (2) Table 49 should reflect 12%, not 10% relating to diagnosis.

On appeal, claimant only addresses SLR testing, saying, as stated, that the "[ROM] test was invalid as he raised the claimant's legs during the [SLR] test." Claimant then said Dr. P rebutted Dr. C by stating:

I have reviewed the findings of his evaluation and according to the measurements, the [ROM] test was invalid, as the [SLR] test was performed manually by the doctor beyond the point of which the patient complained of increased pain. [Emphasis as written.]

Dr. P on August 20, 1998, had stated:

I have reviewed the findings of his evaluation and according to the measurements, the [ROM] test was invalid, as the straight leg raising test exceeded the sum of the sacral flexion and extension by more than 10 degrees. The only comment that I have to rebuttal his exam is that according to the patient, the straight leg test was performed manually by the doctor beyond the point of which the patient complained of increased pain.

Therefore, he obtained a number that was much higher than the addition of the sacral flexion and extension. [Emphasis added.]

Emphasis in the quotation from Dr. P is provided to compare it to the quotation provided by claimant's appeal, which omitted the highlighted portions from Dr. P's statement. Dr. P's statement does not say that the ROM test was invalid because the SLR test was performed manually by the doctor beyond the point of pain. Dr. P does not say that what Dr. C did is not allowed by the AMA Guides. He does say that the straight leg number obtained manually by Dr. C by raising the leg beyond the point of increased pain, according to claimant, was much higher than the sum of sacral flexion and extension.

As stated, claimant testified she cried out; however, AMA Guides at page 89, 90, and 91 do not say that the doctor may or may not assist movement of the leg—an illustration on page 92 shows one hand of a rater on a patient's extended leg, as if holding it down, and another hand under the calf of the leg that is upright at approximately a 75E angle to the body.

Dr. C was queried several times. After Dr. C's examination of claimant on December 15, 1997, he provided a 14% IR made up of not 10%, as alleged at the hearing, but 12% for a specific disorder of the spine as set forth in Table 49 (we note that her doctor's (Dr. P) IR from Table 49 was 10%) and two percent for lateral ROM. In January 1998 the Texas Workers' Compensation Commission (Commission) wrote to Dr. C saying that claimant questioned the use or nonuse of various tables in the AMA Guides—no question appears to have been raised as to Dr. C's method of performing the SLR test. After Dr. C replied that he gave no neurological IR because no dermatomal deficit was identified and discussed rounding of the lateral ROM measurements, claimant then wrote to the Commission in March 1998 complaining of the way Dr. C moved her legs and also said he was rude; she again questioned Dr. C's absence of a neurological IR by stating that she needed more surgery. Dr. C replied that claimant waited more than three months to question his conduct at the examination; he pointed out that he recorded a 70E sitting SLR without pain as compared to his prone SLR in the very low 50E area. He said that the 14% IR "stands." Then, in June 1998, Dr. C was provided more medical records to review; he replied that he reviewed the records and saw no reason to change his IR, noting that the most recent surgery took place more than six months after statutory IR.

As stated, claimant's appeal addressed only the ROM testing, so any other issues will not be addressed herein. The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She also quoted fully from Dr. P's statement in her Statement of Evidence and concluded that Dr. P's comments amounted to a difference of medical opinion, stating that Dr. C "properly" applied the AMA Guides. In deciding that Dr. C properly applied the AMA Guides, she could give weight to his statement that claimant exhibited no discomfort when a sitting SLR, almost 20E greater than the SLR objected to by claimant, was performed. She could then conclude that Dr. C did not wrongfully force the SLR. She said that he also "properly addressed the questions

asked of him.” She then concluded that the great weight of other medical evidence is not contrary to the designated doctor.

The evidence sufficiently supports the hearing officer's decision. The AMA Guides, particularly pages 89, 90, and 91, do not indicate that Dr. C' s SLR was improper. Dr. P also did not say that what Dr. C was said to have done was improper under the AMA Guides. Therefore, the appealed question concerning the manner of doing the SLR test does not require reversal of the decision. Section 408.125 provides that presumptive weight will be given to the designated doctor and his opinion will be used unless contrary to the great weight of other medical evidence. The hearing officer's determination that Dr. C's opinion was not contrary to the great weight of other medical evidence is sufficiently supported by the evidence.

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

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge