APPEAL NO. 990409

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 January 26, 1999. She (hearing officer) determined that the impairment rating (IR) of the appellant (claimant) is 14%, in accordance with the amended report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor, Dr. A. Claimant appealed, contending that his treating doctor certified a higher IR, that the designated doctor did not perform a thorough examination, and that the designated doctor did not use the correct version of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Claimant also complains that the hearing officer excluded and did not consider certain evidence. Respondent (carrier) replies that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer erred in according presumptive weight to the designated doctor's report and in determining that his IR is 14%. He also contends that his treating doctor certified a higher IR, that the designated doctor did not perform a thorough examination, and that the designated doctor did not use the correct version of the AMA Guides.

The report of a Commission-selected designated doctor is given presumptive weight with regard to maximum medical improvement status and IR. Sections 408.122(b) 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.

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 is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been 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.

The mere fact that claimant's treating doctor certified a different IR does not mean that the great weight of the other medical evidence is contrary to the designated doctor's report. A mere difference in medical opinion is not enough to overcome the presumption in favor of the designated doctor. Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996. Our review of the designated doctor's report does not reveal that the designated doctor used the wrong version of the AMA Guides. The hearing

officer considered claimant's complaints about whether the designated doctor conducted a thorough examination and made her determinations based on the evidence before her. After reviewing the record, we conclude that the hearing officer's IR determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

The claimant contends the hearing officer abused her discretion in excluding certain evidence. Claimant sought to admit a letter from his former attorney and a deposition on written questions for his treating doctor, Dr. N. The carrier objected to the admission of this evidence and argued it was not exchanged within 15 days after the benefit review conference (BRC). The claimant did not seek to show good cause for his failure to timely exchange the evidence and the hearing officer sustained the objection and did not admit the evidence.

Parties must exchange documentary evidence with each other not later than 15 days after the BRC and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE 142.13(c) (Rule 142.13(c)). A hearing officer may rule on the admissibility of evidence parties seek to introduce into the CCH record. Rule 142.2(8). Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. At the CCH, the hearing officer asked claimant if he exchanged the documents with carrier and claimant indicated that he did not because he did not know it was required. We conclude that the hearing officer herein did not abuse her discretion in excluding the letter and deposition on written questions offered by the claimant.

We affirm the hearing officer's decision and order.

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Judy Stephens
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Tommy W. Lueders
Appeals Judge