APPEAL NO. 990486

On January 29, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether appellant (claimant) sustained an injury to her cervical area in addition to bilateral carpal tunnel syndrome (CTS); and (2) what is the correct impairment rating (IR). The claimant requests reversal of the hearing officer's decision that: (1) claimant's compensable injury does not extend to her cervical area; and (2) claimant has an eight percent IR. The respondent (self-insured) requests affirmance.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on Friday, _____, while working for the self-insured's hospital. Self-insured represented that it has accepted a compensable injury to claimant's hands. Claimant began working for the self-insured's hospital in 1991. The first two years she worked as a file clerk and then she worked for five years as a patient account representative, which is the job she had when she sustained her compensable injury. Claimant said that her job was to register patients into the hospital; that that required her to type eight hours a day on the keyboard of a computer; that she had to look down at her keyboard and at the information she was typing into the computer; that she registered 100 to 150 patients a day; and that it took about 10 minutes to register a patient.

Claimant further testified that while registering patients on _____, she felt a strain and pulling in her right hand; that she also had neck pain at that time but thought that was from stress; that she did not have neck pain until the weekend following _____ when her neck was stiff and popping; that she did not work weekends; that on Monday, (3 days after the date of injury), she went to self-insured's emergency room and complained of pain in her hands, arms, shoulders, and neck and was prescribed physical therapy and a splint; that she then went to Dr. N and told him that she had hurt her hands working and that she had pain in both hands; that she then went to Dr. G; that she believes she told Dr. G about her neck pain; that Dr. G referred her to physical therapy where she had therapy for her neck; that she was off work since her injury of _____; that she is currently self-employed; and that she has not had surgery for her injury of _____.

Claimant further testified that she had a motor vehicle accident (MVA) in July 1993 when the vehicle she was driving was struck from behind by a truck; that she saw a doctor for neck and shoulder complaints following the MVA and undertook therapy for her neck; that she was off work for five or six months as a result of the MVA; that she then returned to work for self-insured; that she did not have neck complaints prior to her injury of _____; and that when she answered self-insured's written interrogatories she had forgotten about the MVA. Self-insured asked in a written interrogatory whether claimant had ever sustained

injuries to her cervical or neck region for any dates before _____, and claimant answered in the negative. A hospital record dated July 29, 1993, states that claimant was complaining on that date of neck and shoulder pain after being in an MVA three days before. A cervical x-ray done on August 3, 1993, was reported as normal.

A hospital record of March 18, 1998, notes that claimant on that date was complaining of bilateral hand and forearm pain and an assessment of bilateral CTS was made. In an employee accident or occupational illness report dated May 21, 1998, claimant wrote that on _____, she experienced sharp pain in her right hand while registering patients, that she continued to work, and that later that day she had pain and numbness in both hands. Claimant said that she thought that her neck pain was related to her hand pain and that is why she did not report her neck pain. Claimant first saw Dr. G on May 22, 1998, and Dr. G noted that claimant told him that she had sharp pain in her right hand while typing at work on _____, and that claimant had tenderness in her cervical region. Dr. G diagnosed claimant as having bilateral wrist strains, possible CTS, and a cervical strain, and noted that claimant had no significant past medical history. Dr. F, a radiologist, reported that x-rays of claimant's cervical spine and wrists done on May 28, 1998, were normal.

Dr. G referred claimant to Dr. M, a neurologist, who noted that he saw claimant for complaints of persistent pain in the neck and wrists. Dr. M wrote on June 8, 1998, that claimant had a normal EMG and nerve conduction study of her right upper extremity on that date but that the history and physical findings suggested that claimant could have a mild form of CTS and that there was a possibility of a wrist strain. A physical therapist noted on June 9, 1998, that therapy goals included increasing claimant's neck, shoulder, and wrist range of motion (ROM). Dr. G referred claimant to Dr. BL for an orthopedic evaluation. Dr. BL noted that he saw claimant on June 12, 1998, for problems with her cervical spine; that claimant told him that on _____, she had pain in her right wrist when typing at work and that over the next two days the pain radiated up to her right upper extremity and into her neck; and that claimant denied any previous injury to the areas of complaint. Dr. BL's impression was that claimant has possible CTS of the right wrist and a possible cervical strain.

Dr. F reported that an MRI of claimant's cervical spine done on July 9, 1998, showed a rupture of the posterior annulus fibrosis at the C3-4 level and that he did not believe that there was any focal herniation of the nucleus pulposus. Dr. F also reported that an MRI of the right wrist done the same day was normal. On July 14, 1998, Dr. G reported that when he initially saw claimant on May 22, 1998, claimant had symptoms and physical findings consistent with a cervical strain and bilateral wrist strain and that claimant had continued to complain of pain in her neck and right wrist.

In a Report of Medical Evaluation (TWCC-69) dated August 21, 1998, Dr. G reported that claimant reached maximum medical improvement (MMI) on August 20, 1998, with a 12% IR. Dr. G assigned impairment of nine percent for abnormal cervical ROM, one percent for abnormal left wrist ROM, and two percent for abnormal right wrist ROM. In a

letter dated January 6, 1999, Dr. G wrote that claimant has been diagnosed as having bilateral CTS and a bulging disc at C3-4, that he believes claimant sustained two separate injuries that became evident at the same time, that the bulging cervical disc may cause pain to radiate to the right shoulder and hand, that the CTS causes pain in both hands, that he believes that both injuries resulted from repetitive trauma from claimant's job, that claimant's job requires constant keying on a keyboard and constantly looking at a computer screen, that having to hold her head in one position for long periods of time to view the computer screen caused a cervical strain and weakened the annulus fibrosis of the disc between C3 and C4 causing bulging of the intervertebral disc, and that constant keying on the keyboard caused irritation of the carpal ligaments bilaterally and caused tenosynovitis which resulted in CTS.

The parties stipulated that the Texas Workers' Compensation Commission (Commission) appointed Dr. B as the designated doctor. Dr. B examined claimant on October 12, 1998, and in a TWCC-69 dated October 13, 1998, he reported that claimant reached MMI on August 20, 1998, with a 13% IR. The parties agreed that claimant reached MMI on August 20, 1998. Dr. B diagnosed claimant as having mild bilateral entrapment neuropathy at the wrists, which he noted was CTS, and a somatic dysfunction of the cervical spine, which he noted was secondary to the first diagnosis. Dr. B assigned impairment of five percent for abnormal ROM of the cervical spine, four percent for abnormal ROM of the right wrist, and four percent for abnormal ROM of the left wrist.

The first issue at the CCH was whether claimant sustained an injury to her cervical area in addition to bilateral CTS. The hearing officer found that no damage or harm occurred to claimant's cervical area as a result of the compensable injury sustained on _____, and he concluded that claimant's compensable injury does not extend to her cervical area. Claimant had the burden to prove the extent of her compensable injury. Texas Workers' Compensation Commission Appeal No. 960733, decided May 24, 1996. Claimant contends on appeal that the evidence proves that she did sustain a compensable injury to her cervical area. While there was evidence that claimant was treated for neck pain after her injury of _____, whether she sustained a cervical injury as a result of work-related activities was a fact question for the hearing officer to decide from the evidence presented. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The hearing officer indicates in his decision that he did not find claimant to be credible and that he was not persuaded by claimant's testimony or the medical evidence that the injury extends to her cervical problems. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The second issue at the CCH was what is the correct IR. Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the

designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that if the great weight of the other medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. Claimant contends that she has a 13% IR as reported by Dr. B, the designated doctor.

"Impairment" means any anatomic or functional abnormality or loss existing after MMI that results from a compensable injury and is reasonably presumed to be permanent. Section 401.011(23). An IR is the percentage of permanent impairment of the whole body resulting from a compensable injury. Section 401.011(24). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(g) provides, in part, that the medical evaluation report form shall contain an instruction to the doctor that the IR shall be based on the compensable injury alone. In Texas Workers' Compensation Commission Appeal No. 941732, decided January 31, 1995, the issues were whether the injured employee's ganglion cyst on her right wrist resulted from her compensable injury and what was the IR; the hearing officer found that the ganglion cyst was not part of the compensable injury and we affirmed that finding; the designated doctor assigned a 22% IR, based in part on impairment due to the ganglion cyst on the wrist; the hearing officer noted that, without the wrist impairment, the employee had an 18% IR for the cervical and lumbar regions according to the designated doctor's report; and the hearing officer found that the great weight of the other medical evidence was not contrary to the finding of the designated doctor with regard to the IR for the cervical and lumbar regions and concluded that the injured employee's IR was 18%. In affirming the hearing officer's decision on the issue of the IR in Appeal No. 941732, we stated:

> The instant case does not involve rejection by the hearing officer of a portion of the IR assigned by the designated doctor for the compensable injury. Rather, an issue as to the extent of the claimant's injury was before the hearing officer and he decided that the injury did not extend to the wrist. As previously noted, the hearing officer decides questions as to the extent of injury, and the designated doctor's opinion is not entitled to presumptive weight on that question. *See* Texas Workers' Compensation Commission Appeal No. 94551, decided June 15, 1994. Thus, not being part of the compensable injury, the right wrist condition should not have been assigned any impairment by the designated doctor and the portion of the IR he assigned for the wrist was easily separated from the IR he assigned for the compensable back and neck injuries. We believe the hearing officer was not in error in determining that the claimant's IR consisted of the impairment assigned by the designated doctor for the compensable back and neck injuries.

The instant case is analogous to the facts in Appeal No. 941732 because, in this case, there was an issue before the hearing officer as to the extent of the injury and he decided that the compensable injury does not extend to the cervical area. We are affirming the decision on the extent of the injury. Thus, the five percent impairment Dr. B assigned

for impairment of the claimant's cervical region was not impairment due to the compensable injury. The impairment Dr. B assigned for the compensable injury was eight percent impairment for abnormal motion of the wrists. The hearing officer found that the findings of Dr. B are a valid certification that claimant reached MMI on August 20, 1998, with an eight percent IR, after deducting five percent impairment assigned by Dr. B for the cervical area, and that the great weight of the medical evidence is not contrary to the findings of the designated doctor. We infer from the hearing officer's finding regarding deducting five percent impairment for the cervical area that the finding as to the great weight of the medical evidence not being contrary to the findings of the designated doctor applies to Dr. B's finding of eight percent impairment for abnormal motion of the wrists. The hearing officer concluded that claimant has an eight percent IR. We conclude that the hearing officer's decision that claimant has an eight percent IR is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Contrary to claimant's assertion in her appeal, she was provided the opportunity to present evidence at the CCH and she presented evidence which was made part of the CCH record.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge