APPEAL NO. 990513

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 10, 1999. He (hearing officer) determined that the appellant (claimant) reached maximum medical improvement (MMI) on October 11, 1995, with an impairment rating (IR) of five percent, in accordance with the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor, Dr. S. Claimant appeals, contending that: (1) the designated doctor should have included impairment for loss of range of motion (ROM) in claimant's shoulders; (2) the designated doctor improperly invalidated cervical ROM; and (3) the designated doctor refused to reexamine claimant and, in his letter of October 13, 1998, exhibited an inability to be impartial. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision.

DECISION

We affirm.

Claimant contends the hearing officer improperly invalidated cervical ROM in this case. Claimant asserts that the designated doctor improperly retested cervical ROM even though he had found valid loss of ROM in his initial set of tests.

The report of a Commission-selected designated doctor is given presumptive weight with regard to MMI 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. 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. A doctor may invalidate ROM measurements based on the doctor's observations of the claimant's ROM. Appeal No. 960034. We have upheld a hearing officer's decision giving presumptive weight to a designated doctor who invalidated ROM based on clinical observation of suboptimal effort. Texas Workers' Compensation Commission Appeal No. 951283, decided September 19, 1995.

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.

We will briefly set forth the facts regarding claimant's medical evidence for her injury, which included a cervical injury, reflex sympathetic dystrophy (RSD), and carpal tunnel syndrome (CTS). In a November 1996 report, Dr. B stated that claimant's cervical ROM was

normal, that her shoulder ROM was decreased, that sensory testing of the upper extremities resulted in "bizarre responses" that he could not interpret, and that claimant's responses were positive regarding six Waddell's signs. Dr. B stated that claimant had severe depression associated with symptom magnification and he suggested that she undergo EMG testing to analyze her upper extremity impairment. In a January 1997 report, Dr. KR noted that claimant exhibited some limitation of motion in her neck and shoulders. He also said that some of claimant's pain in her extremities may be diabetic pain. In discussing claimant's impairment, Dr. KR did not state that claimant had any impairment for loss of cervical ROM. An April 1997 chiropractic report indicated that claimant was diagnosed with lumbar subluxation, sciatica, and multiple cervical subluxation. An April 28, 1997, report from Dr. K stated that claimant was diagnosed with RSD, myofascial syndrome, and fibromyalgia; that she underwent CTS release surgery in 1994; and that she has been treated with physical therapy and a TENS unit. A March 1998 letter from Dr. CZ stated that claimant has adult onset diabetes and that inflammatory changes in claimant's right foot are likely due to sympathetic dystrophy. In a May 1998 report, Dr. C discussed claimant's impairment and he did not include any impairment for, or discuss, loss of cervical ROM.

The designated doctor filed a Report of Medical Evaluation (TWCC-69) on January 26, 1996, certifying an MMI date of October 11, 1995, and an IR of five percent. In his accompanying report, the designated doctor stated that: (1) he performed cervical ROM studies on two separate occasions; (2) "R and L lateral flexion and R rotation were invalid due to inconsistencies of greater than 15% between studies"; (3) "[ROM] of the cervical spine is 100% of normal"; (4) claimant's diagnoses were bilateral CTS, post release and "severe myofascial pain syndrome bilateral shoulders and upper extremities"; and (5) claimant's five percent IR included four percent impairment for the cervical spine under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and one percent impairment for her wrist. The designated doctor said that he did not think claimant's problem was in the cervical spine, that her problems were in her upper back and shoulders, and that he did not have a way to rate this under the AMA Guides. The designated doctor stated:

> Cervical [ROM] testing is performed on this examinee on 2 occasions to allow test-retest cross-validation. The examinee demonstrates poor test-retest cross-validation with variations of greater than 15% in 4 out of 6 cervical motions measured. This indicates that her cervical [ROM] testing data is unreliable, and therefore cervical [ROM] is felt to be invalid.

On the worksheets filled out by the designated doctor, there were variations in T12 ROM measured regarding cervical left lateral flexion that varied, ranging from five degrees to 17 degrees. Further, the designated doctor stated that he found claimant's cervical ROM to be normal when he performed the physical examination.

In the decision and order, the hearing officer stated:

> Claimant also asserts . . . that [the designated doctor's] IR is invalid because he performed two [ROM] tests on claimant. However, that was based on argument not evidence. Further, whether an additional ROM test should be performed is a matter of medical judgment and a doctor may reject valid test measurements for other reasons. Argument alone is not sufficient to find [the designated doctor's] IR to be invalid. . . .

In this case, it appears that the designated doctor performed repeat testing of cervical ROM, testing six times. Given the variations in T12 ROM and the physical examination that showed normal cervical ROM, we conclude that it was not improper for the designated doctor to perform a "test-retest" procedure in this case.

Claimant contends that the hearing officer erred in according presumptive weight to the designated doctor's report because the designated doctor failed to include impairment for loss of ROM in claimant's shoulders. The parties agreed that the claimant sustained a compensable injury that included the cervical spine, RSD, and CTS. The parties did not agree that there was a shoulder injury. The designated doctor indicated that he rated the compensable injury. Claimant has not cited to any section of the that requires that the designated doctor include impairment for loss of ROM in claimant's shoulders because there was no compensable shoulder injury. We perceive no reversible error.

Claimant contends the designated doctor erred in failing to reexamine claimant. Claimant does not detail her complaints on appeal in this regard. Claimant apparently contends that RSD is a progressive condition; that after the designated doctor's 1996 report, the parties agreed that RSD is part of the compensable injury; and that the designated doctor did not then reexamine claimant after being informed of this fact by letter from a benefit review officer dated September 18, 1998. Instead, on October 13, 1998, the designated doctor replied that he did not see any reason to change his IR. We would note that claimant's statutory MMI date was February 27, 1996, and the designated doctor examined claimant near that time, on January 2, 1996. At that time, the designated doctor said he reviewed the medical records sent to him and opined that, when he examined claimant in January 1996, he did not find any evidence of RSD. Under the facts of this case, the hearing officer did not err in refusing to require the designated doctor to reexamine claimant.

We affirm the hearing officer's decision and order.

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Judy Stephens
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge