APPEAL NO. 990538

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 17, 1999, a hearing was held. She (hearing officer) determined that the appellant's (claimant) date of maximum medical improvement (MMI) was June 3, 1997, and his impairment rating (IR) was zero percent. Claimant asserts that his MMI date should be June 9, 1998, and the IR should be five percent. He refers to Dr. M diagnosis of Meniere's disease, to Dr. B assertion that the designated doctor, Dr. C, did not adequately evaluate the injury, and to Dr. L psychological testing in stating that the great weight of the medical evidence is contrary to the opinion of Dr. C. Respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when a falling pipe struck him on his helmet, denting his helmet and causing a period of unconsciousness. The size of the pipe was not provided, but some evidence indicates that it fell about 16 feet.

The employer's first report of injury (TWCC-1) was dated January 22, 1997, one day after the accident. It listed Dr. S at an emergency room (ER). In addition, a claimant's April 1997 request to change treating doctors shows Dr. Ma, D.C. as the treating doctor while Dr. B was listed as the new treating doctor. Unfortunately, the record contains no documents from either Dr. S, the ER, or Dr. Ma. The first medical report in the record is dated over three weeks after the accident, when Dr. SA reported claimant's being struck by a pipe with a complaint of decreased visual acuity. Dr. SA found 20/20 in both eyes with mild myopia; he stated no disability was anticipated, but it appears he was only addressing claimant's eyes. Then on February 12th Dr. B saw claimant on referral from an unknown source. Dr. B is a neurologist who stated that the neurological exam was "within normal limits"; this included coordination testing. Dr. B did note lumbar discomfort on range of motion movements. Dr. B indicated that an EEG should be done. Dr. B then interpreted the EEG, done on February 19, 1997, as normal "by visual criteria with neurometric analysis suggesting a post-concussive syndrome." Dr. B thereafter indicates his referrals to Dr. L and to Dr. M. Dr. L in April 1997 said he could not tell whether indications of impairment of attention, retention and concentration were from "emotional versus traumatic brain injury factors associated with his recent accident or this previous car accident when he was 8 years old." (Emphasis added.) More psychological testing was done in June 1997 which was said to "indicate prominent generalized neuropsychological impairment." Also noted in the summary of that report was "testing indices suggest the operative influence of cultural factors in the verbal component . . . ." This report did not answer the question posed in the April report as to causation. (Both Dr. Ba, a neurologist, who evaluated claimant in August 1997 for the carrier, and Dr. J, who evaluated claimant on referral from Dr. Ma in March 1997, referred to a CAT scan of the "head" or "brain" on January 23, 1997, as either "normal" or "did not show any acute intracranial abnormality." (Emphasis added.))

Dr. M is an ear, nose and throat specialist who said in December 1997 that claimant's dizziness, by history, has been diminishing in number of episodes per week of five to six down to two or less. Dr. M had earlier provided a vasodilator for this problem. Dr. M also stated in March 1998 that claimant has been diagnosed with Meniere's disease, but added, "the question is, was this brought on by his injury. It is a very possible fact that this is the so-called delayed Meniere's disease that does come on after an injury." In April 1998, claimant saw Dr. H, also an ear, nose and throat doctor, who also noted the normal CT scan soon after the injury. He noted claimant's dizziness occurs at times when he bends over and then brings his head up too quickly. He had a CT scan of claimant's sinuses, which also was normal. Dr. H thought that claimant was "disabled" but also believed that "his psychologic status has more to do with this than his physical injuries."

Dr. B in December 1997 commented that he did not think that Dr. C's evaluation adequately dealt with claimant's "central nervous system" and in June 1998 signed a TWCC-69 indicating that claimant reached MMI on June 9, 1998, with five percent IR with a copy of two pages from some edition of the AMA Guides. (One page provided indicates that disturbances of complex integrated cerebral functions are the basis of the five percent IR, but the page provided is numbered "105"; another page that begins with "4.1a The Brain" is numbered "104." In my copy of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), which is required to be used by Section 408.124, the page with "4.1a The Brain" is numbered 96, while the page with Disturbances of Complex Integrated Cerebral Functions is numbered 97.)

Dr. C had signed his initial TWCC-69 on September 18, 1997, with a narrative dated September 12, 1997. His comment that claimant's IR from a closed-head injury was zero percent "per Table 49 per Table 1" provides no explanation. Fortunately, when added medical records were sent to Dr. C in June 1998, he agreed to reevaluate claimant; after that reevaluation, another TWCC-69 was provided which also said MMI was reached on June 3, 1997, with zero percent IR, but the narrative dated July 24, 1998, attributed claimant's IR of zero percent from the closed-head injury to "Table 1, Chapter 4" of the AMA Guides. There is a Table 1 in Chapter 4 which addresses spinal cord and brain impairment. It includes the complex integrated cerebral function disturbances that Dr. B considered in assigning a five percent IR. After providing the second TWCC-69, Dr. C responded to a Texas Workers' Compensation Commission (Commission) inquiry in December 1998 by saying that there was no medical evidence documenting memory loss, complex cerebral dysfunction, or specific brain injury." He also referred to normal CT scans and no objective neurological deficits in saying that "without objective test or study data and no apparent difficulties during my examination" he would not base IR on subjective complaints alone.

In addition to Dr. B's five percent IR, Dr. Ba in August 1997, when he examined claimant for carrier, also stated that MMI was reached on August 20, 1997, with a five percent IR based on "complex integrated cerebral functions."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. Since there was a designated doctor involved, she had to apply Sections 408.122 and 408.125 which give presumptive weight to the designated doctor's opinion and provide that the hearing officer is to use that opinion unless the great weight of other medical evidence is to the contrary. While there are differences of opinion, Dr. C's latest evaluation and latest letter make it clear that he found no objective evidence for an IR. Even page 97 of the AMA Guides states, "the restrictions placed on patients with established organic brain syndromes provide criteria by which permanent impairment may be evaluated" in describing "Disturbances of complex, integrated cerebral functions." The medical records reveal more medical testing done after Dr. C's MMI date, but no surgery and what appears to be little significant treatment. The hearing officer chose to give Dr. C's opinion presumptive weight. On appeal the Appeals Panel does not find the determination of the hearing officer that Dr. C's findings (from his last narrative report and his last letter of explanation) are not overcome by the great weight of other medical evidence to be against the great weight and preponderance of the evidence. Therefore the determination that claimant's MMI date is June 3, 1997, and his IR is zero percent is sufficiently supported by the evidence.

Finding that the determination 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:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Gary L. Kilgore
Appeals Judge