APPEAL NO. 990781

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 March 3, 1999. She determined that the respondent's (claimant) impairment rating (IR) was 85% as certified by Dr. B, a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) appeals this determination, contending that it is incorrect and not otherwise supported by the evidence. The claimant responds that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, a registered nurse, sustained a compensable injury on _____, in the form of a "latex allergy." The parties stipulated that she reached maximum medical improvement on September 27, 1996. Dr. BX, the claimant's treating doctor, described her condition as "quite severe." Dr. C, a carrier doctor who examined the claimant, also diagnosed "severe" latex allergy, which manifested itself as "urticaria, generalized dermatitis, abdominal cramps, rhinorrhea, conjunctivitis, and asthma." The claimant testified that latex-containing products are everywhere, and her reaction from either direct contact or contact with airborne particles includes skin rashes, hives and burning itching skin, sinus infection, stuffy nose, and watery painful eyes. She also testified that her use of medication has caused glaucoma, which was verified by Dr. BX. She also said she reacts with stomach cramps and nausea to different foods "that have been cross-linked with the same protein as . . . latex." Her reactions can last up to two weeks. She says she stays at home 98% of the time to minimize her contact with latex.

Dr. B, an orthopedic surgeon, was appointed designated doctor in this case. On May 7, 1997, after he had initially seen the claimant, he wrote the Commission that "I do not feel that I have the expertise in the field of allergy to give an honest determination of impairment" and recommended a trained allergist for the role of designated doctor. The Commission was deaf to this plea and Dr. B discharged his duties as designated doctor after consultations with an allergist and the claimant's treating doctor.

The claimant testified that her compensable injury has not created any musculoskeletal problems. The parties did not dispute that the injury was rateable only under Chapter 13, The Skin, of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. An impairment under Chapter 13 is derived from a medical evaluation of the condition and an analysis of its effects on a claimant's "ability to perform or participate in the activities of daily living, including occupation." Paragraph 13.0. Table 1 of Chapter 13 establishes five categories or classifications of skin impairment with each category covering a range of ratings. Thus, Category 1 supports a finding of zero to five percent whole body impairment when a claimant shows symptoms of skin disorder and "with treatment, there is

no limitation, or minimal limitation, in the performance of the activities of daily living, although exposure to certain physical or chemical agents might increase irritation temporarily." Classes 2 through 5 are described in terms of the amount of treatment required and the limitations imposed in an increasing degree on life activities. Class 5, which supports an award of an 85% to a 95% impairment, requires medical evidence of continuous treatment, "which necessitates confinement at home or other domicile **and** there is severe limitation in the performance of activities of daily living." This classification scheme obviously gives much latitude to the evaluating physician.

Dr. B, in a Report of Medical Evaluation (TWCC-69) signed on October 28, 1997, with attachment, reported the results of his examination of the claimant, and included an evaluation of the claimant's daily activities affected by her skin condition. He placed her in Class 5 and assigned her the low end IR of 85% for this class. He confirmed this IR in a letter of July 1, 1998, to the Commission.

In a TWCC-69 of October 21, 1996, Dr. C assigned a 10% IR. Even though he described the claimant's sensitivity as "extreme," he placed her in Class 1 and assigned four percent IR for the latex allergy, and six percent for an abnormal pulmonary test. Dr. M, an internist, reviewed the claimant's records at the request of the carrier. In a report of December 3, 1997, he stated that he believed claimant should be placed in Class 2 and assigned a 15% IR. He commented that Dr. B's 85% IR was "entirely based on musculoskeletal impairment, none of which are related to [claimant's] latex allergy."

Section 409.125(e) provides that the report of a designated doctor selected by the Commission is entitled to presumptive weight and that the Commission shall base a claimant's IR on this report "unless the great weight of the other medical evidence is to the contrary." This "great weight" determination amounts to more than a mere balancing of the evidence and is a higher standard than one of a preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 93432, decided July 16, 1993. Whether the great weight of the other medical evidence is contrary to the report of the designated doctor is a factual determination of the hearing officer, Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993, which, in turn, is subject to reversal on appeal only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer accorded presumptive weight to Dr. B's report, as required by the 1989 Act and concluded that it was not contrary to the great weight of the other medical evidence. The carrier argues that Dr. B was improperly selected as designated doctor because Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b)(4) (Rule 130.6(b)(4)) requires "to the extent possible" that the designated doctor "be in the same discipline and licensed by the same board of examiners as the employee's doctor of choice." Dr. BX, the treating doctor, is an M.D. Dr. B, the designated doctor, is a D.O. Both are licensed by the same medical board and we construe them to be within the "same discipline." The carrier presents no evidence to the contrary. By his own admission, Dr. B was not an allergist, but he commendably did consult with other experts, including the treating doctor, before certifying an IR. *See* Texas Workers' Compensation Commission Appeal No. 93459,

decided July 15, 1993. We believe that the hearing officer properly considered the medical specialties and qualifications of all the doctors involved in this case. Texas Workers' Compensation Commission Appeal No. 941752, decided February 6, 1995. The carrier also argues that it was improper to place the claimant in Class 5 because the claimant was not confined to her home, as was evident in her appearance at the CCH and a vacation trip to Oregon. The claimant was wearing a mask at the CCH and testified that her trip caused severe reactions to latex, but she felt some relief from symptoms when in the mountains. We do not believe that the confinement criterion of Class 5 requires total confinement with no trips outside the home. The claimant's testimony of 98% confinement, considered credible by the hearing officer, constitutes evidence of more than substantial confinement and is consistent with an IR at the low end of the permissible range of ratings for this Class. The carrier also relies on the opinion of Dr. M for the proposition that the claimant is not in Class 5 and she does not require continuous treatment. The claimant testified to her daily use of medication and susceptibility to an adverse reaction to latex at any moment of any day, which she is prepared to counteract with her medication. Such evidence is sufficient to support inclusion of the claimant in Class 5.

Obviously, as the carrier points out, there is a great disparity in the ratings of Dr. B and the two other doctors. We would note that Dr. M's comment that Dr. B's rating was "entirely based on musculoskeletal impairments" is contrary to Dr. B's report, which assigns an IR solely under Chapter 13. The different IR's in this case were premised on different opinions of what Class was appropriate for the claimant. These could be considered no more than professional disagreements that, in the hearing officer's opinion, did not rise to the level of the great weight of the other medical evidence contrary to Dr. B's report. Under our standard of appellate review, we find the evidence sufficient to support this determination.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge