APPEAL NO. 990934

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 25, 1999. She determined that Dr. E, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, certified that the appellant (claimant) reached maximum medical improvement (MMI) on May 8, 1998, with an 11% impairment rating (IR); that the certification of the designated doctor is not contrary to the great weight of the other medical evidence; and that the claimant's IR is 11%. The claimant appealed; urged that the report of Dr. E was not rendered in compliance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and is not entitled to presumptive weight; contended that the great weight of the other medical evidence is contrary to the report of the designated doctor; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that her IR is 15%, as certified by Dr. T, her treating doctor. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant had a bilateral L4-5 laminectomy with diskectomy and foraminotomy on October 14, 1997, performed by Dr. T. A report of an MRI of the lumbar spine dated March 19, 1998, contains the following impression:

1. Small soft tissue mass at the posterolateral aspect of the L4 vertebral body probably representing enhancing epidural fibrosis. An enhancing vascularized fragment cannot entirely be excluded but the mass is continuous with additional epidural fibrosis at the L4-5 level.

2. Mild posterior disc bulge at L3-4.

3. Bilateral neural foramen narrowing at L4-5.

Dr. T certified that the claimant reached MMI on May 8, 1998, with a 15% IR. Dr. E certified that the claimant reached MMI on May 8, 1998, with an 11% IR. Both Dr. E and Dr. T assigned 10% impairment for a specific disorder under Table 49 of the AMA Guides and both invalidated range of motion for lumbar flexion and extension. Dr. T assigned two percent for loss of right lumbar lateral flexion and one percent for loss of left lumbar lateral flexion. Dr. E assigned zero percent for loss of right lateral flexion and one percent for loss of left lateral flexion. Dr. T assigned two percent for loss of strength, and Dr. E assigned zero percent for loss of strength. The record does not contain any other IRs.

The claimant testified that Dr. E told her that he knew the adjuster handling her case, that he was a nice guy, but that he had not met him. She said that Dr. E had her undress to her panties and bra, that he made comments about her legs, and that he said that she was in pretty good shape and he was impressed with her body structure. She said that, when Dr. T performed his examination, he put his hand under her leg to support it, but that Dr. E pushed her leg when he examined her.

The 1989 Act sets forth a mechanism to help resolve conflicts concerning IR by according presumptive weight to the report of a doctor referred to as the designated doctor. Texas Workers' Compensation Commission Appeal No. 92495, decided October 28, 1992. If the Commission selects the designated doctor as was done in this case, the Commission shall base its determination of the claimant's IR on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. No other doctor's report is accorded the special presumptive status given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. The hearing officer resolves conflicts in expert evidence and assesses the weight to be given to expert evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In its response to the claimant's appeal, the carrier stated that the claimant did not present any medical evidence that the lumbar range of motion flexion and extension tests performed by Dr. E were not made in compliance with the provisions of the AMA Guides. Both Dr. T and Dr. E assigned zero percent for loss of lumbar flexion and extension. The hearing officer did not determine that the report of the designated doctor was made in compliance with the provisions of the AMA Guides and that it is entitled to presumptive weight. Since those questions were raised, she should have made such determinations. However, under the circumstances of this case, we are able to infer or imply that she determined that Dr. E's report was rendered in compliance with the provisions of the AMA Guides and is entitled to presumptive weight. Those implied determinations and her determination that the great weight of the other medical evidence is not contrary to the report of the designated doctor are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge