APPEAL NO. 991031

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 April 12, 1999. It is undisputed that the respondent (claimant) sustained a compensable injury on _____. The hearing officer determined that the claimant's compensable injury includes an injury to his lower back; that Dr. BG, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, certified that the claimant reached maximum medical improvement (MMI) on November 17, 1998, with a 30% impairment rating (IR); that the great weight of the other medical evidence is not contrary to the report of Dr. BG; and that the claimant reached MMI on November 17, 1998, with a 30% IR. The appellant (carrier) requested review, urged that the decision of the hearing officer is so against the great weight and preponderance of the evidence as to be manifestly unjust and wrong, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's compensable injury does not include an injury to the lower back and that the claimant's IR is either two percent or four percent as certified by other doctors. A response from the claimant has not been received.

DECISION

We affirm.

The claimant testified that on _____, he was struck by about a 14-inch chain wheel used to open and close large valves; that the wheel struck him on the hard hat he was wearing; that he did not remember falling, but did remember being helped up; that his head hurt the most and he also had pain in his neck, arms, low back, and legs; that he was dizzy and his legs were wobbly and had no feeling in them; that he was taken to the (Medical Center); that he told the people there that his head, neck, arms, low back, and legs hurt; and that he received therapy, including use of a hydrotherapy on a bed for his entire body.

A report from the Medical Center on the day of the accident indicates that the claimant was hit on the top of his head with a chain wheel, that he had not lost consciousness, that he had neck and shoulder pain, that x-rays of the skull were normal, and that he was to take Tylenol for pain. A report from the Medical Center dated February 23, 1998, is difficult to read and states that the claimant complained of pain on lateral dorsal areas with pain and numbness at the fifth (unable to read the next word) and pain in the right hand and elbow. Another report from the Medical Center dated March 2, 1998, says that the claimant continued to hurt on the right shoulder, elbow, and (word that cannot be deciphered). A Medical Center report dated March 9, 1998, indicates that the diagnoses is cervical strain. A report of an MRI from the Medical Center dated March 25, 1998, states that there is mild to moderate spondylosis and posterior spurring at C4-5 and C5-6, that no significant spinal stenosis was seen, that the findings could be attributable to degenerative osteoathritis or possibly even posttraumatic marrow edema, and that the possibility of early inflammatory change or discitis cannot be ruled out.

Dr. W became the claimant's treating doctor. In a report dated March 24, 1998, Dr. W states that the claimant was scheduled for an MRI the next day, that he had cervical, right shoulder, and right elbow pain; and that he had low back pain that sometimes radiates into both legs. A report form Dr. W dated April 6, 1998, indicates that the claimant has a cervical strain and that he was sent to physical therapy (PT). The claimant began PT on April 7, 1998, and progress notes dated April 20 and 21, 1998, state that hydrotherapy was administered to the lower back. A report from Dr. W dated May 1, 1998, states that the claimant has lower back pain, that it is apparently new (three weeks), and that PT should be continued. In a report dated October 1, 1998, Dr. W said that the claimant had no neck pain but did have back pain.

In a Report of Medical Evaluation (TWCC-69) dated October 20, 1998, Dr. W certified that the claimant reached MMI on that day with a two percent IR. The claimant disputed the report of Dr. W. In a TWCC-69 dated December 28, 1998, Dr. BG certified that the claimant reached MMI on November 17, 1998, with a 38% IR, consisting of 22% for the cervical injury and 16% for the lumbar injury. At the request of the carrier, (Company) reviewed the report of Dr. BG. A report from (Company) dated January 6, 1999, and signed by Dr. G states that four percent, rather than six percent, should be assigned for a specific cervical injury 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); that 12% should be assigned for loss of cervical range of motion (ROM); that it was unable to validated the impairment assigned by Dr. BG for specific lumbar injury and loss of lumbar ROM; that the carrier does not consider the lumbar injury to be part of the compensable injury; and that the claimant's IR is 16%. In a TWCC-69 dated February 16, 1999, Dr. BG rated only the cervical injury and assigned a 20% IR. Dr. CG examined the claimant at the request of the carrier and certified that the claimant reached MMI on February 18, 1999, with a four percent IR for the cervical injury based solely on a specific cervical injury under Table 49 of the AMA Guides. In a letter dated March 12, 1999, Dr. BG was asked to rate both the cervical and the lumbar injuries. In a TWCC-69 dated March 22, 1999, Dr. BG assigned 21% for the cervical injury and 12% for the lumbar injury and used the combined values chart to assign a 30% IR.

We first address the hearing officer's determination that the claimant's compensable injury includes an injury to the low back. The burden is on the claimant to prove by a preponderance of the evidence the extent of an injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and it does not

normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The discussion of the hearing officer in her Decision and Order indicates that she properly applied the law to the facts and that she considered all of the evidence on the issue of whether the claimant's low back is part of the compensable injury. The hearing officer's determination that the claimant's compensable injury includes injury to his low back is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support that determination of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We next address the determinations that the claimant reached MMI on November 17, 1998, with a 30% IR as certified by the designated doctor. The 1989 Act sets forth a mechanism to help resolve conflicts concerning MMI and 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 whether the claimant has reached MMI and the claimant's IR on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. Sections 408.122(c) and 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). The hearing officer determined that the great weight of the other medical evidence is not contrary to the report of the designated doctor that the claimant reached MMI on November 17, 1998, with a 30% IR and that the claimant reached MMI on November 17, 1998, with a 30 percent IR. From those determinations, we can infer that the hearing officer determined that the last report issued by Dr. BG is entitled to presumptive weight. The explicit and inferred determinations of the hearing officer concerning the date the claimant reached MMI and his IR are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. King, *supra*; Pool, *supra*.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge