

APPEAL NO. 991190

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 May 11, 1999. The single issue at the CCH was what was the respondent's (claimant) impairment rating (IR). The hearing officer determined that the IR was 21% as certified by a Texas Workers' Compensation Commission (Commission)-selected designated doctor. The appellant (carrier) appeals, urging that the evidence it presented was the greater weight of the other medical evidence and outweighed the report of the designated doctor. The claimant responds that there is sufficient evidence to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Affirmed.

The claimant sustained a head and cervical injury when the truck he was riding in hit a speed bump and caused him to hit the sun visor. He had to have stitches in his head as a result of the incident and has had cervical problems. The company doctor returned him to work. In a report dated November 14, 1997, this doctor found him at maximum medical improvement (MMI) on that date with a zero percent IR, the claimant sought his own doctor and was kept off of work. The claimant states he disputed the MMI/IR from the company doctor. He was subsequently seen by a carrier doctor, Dr. C, D.C., on September 14, 1998, and was assessed an MMI date of June 1, 1998, with an IR of four percent. Because of a dispute, a designated doctor was appointed by the Commission and the claimant was examined and evaluated by Dr. S, D.C. and was assessed an IR of 21% with an MMI date of October 22, 1998. Subsequently, a peer review of the claimant's medical records was conducted by Dr. G, D.C., who essentially agreed with Dr. C's four percent IR. In response to an inquiry from the Commission, Dr. S addressed the evaluation and opinion of Dr. G and explained her rating and her disagreement with Dr. G, pointed out that she followed the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), and noted that the disagreement seemed to center around range of motion (ROM) findings. Dr. S adhered to her rating. Both Dr. C and Dr. G testified over the telephone regarding their opinions.

While the rating assessed by Dr. S seems, from experience, to be somewhat inordinately high for the injury, the basic area of contention was the ROM measurements for the cervical area and the medical judgment whether they were valid. In this regard, Dr. G did not examine the claimant but only reviewed records, and expressed his disagreement on the application of the provisions of the AMA Guides. Dr. S found the ROM valid from the measurements made and her observation of the claimant outside the examination. On the other hand, Dr. C invalidated ROM from his observations and his belief that the claimant was restricting his effort.

The hearing officer had the conflicting medical opinions before him and found that the great weight of the other medical evidence did not outweigh the presumptive weight accorded the report of a designated doctor. Section 408.125(e). We have noted that it is not uncommon to have a difference in medical judgment and opinion and that this is one of the main purposes behind the designated doctor provision which places the designated doctor in a unique position. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. As we stated in Appeal No. 92412, it is not merely a balancing of the medical evidence which is required to overcome the presumptive weight of the designated doctor. A mere difference of medical opinion is generally not sufficient to overcome the report of a designated doctor. Texas Workers' Compensation Commission Appeal No. 950871, decided July 13, 1995. As stated there was a difference in the medical opinion regarding ROM and the validity thereof. From our review of the evidence, we cannot find a sufficient basis to conclude that the great weight of the medical evidence was contrary to the report of Dr. S, whose report was entitled to presumptive weight, including her determinations on ROM. Texas Workers' Compensation Commission Appeal No. 970771, decided June 12, 1997. Accordingly, the decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

CONCUR IN RESULT:

Judy L. Stephens
Appeals Judge