APPEAL NO. 991199

This appeal arises 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 11, 1999. The issue in this case was the impairment rating (IR) of the appellant (claimant). The hearing officer determined that the IR is zero percent, in accordance with the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor. Claimant appeals, contending that the designated doctor did not have his MRI report, that the other medical evidence is contrary to the designated doctor's report, and that his IR should be higher. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that his IR is zero percent. Claimant complains that the designated doctor did not have his MRI report and that the IR reports of Dr. O and Dr. B are more accurate and show that he had some impairment related to his spine. Claimant contends that he should have received impairment for "six months of documented pain." Claimant asserts that the designated doctor did not base his report on the medical evidence.

The parties stipulated that claimant sustained a compensable injury on _____, and that he reached maximum medical improvement (MMI) on August 20, 1998. Claimant testified that he ran into a beam while working as a packer, sustaining an injury to his head and neck and causing pain in his arms, elbows, hands, and back. Claimant said he has not worked since his injury and that he still suffers problems with his head, neck, back, and arms.

In a March 10, 1998, report, Dr. O stated that claimant's IR is five percent, which was for loss of cervical range of motion (ROM). Dr. O stated that no impairment was due for specific disorders. In an August 24, 1998, report, the designated doctor, Dr. N, stated that no impairment should be included for specific disorders, neurological impairment, or loss of ROM. In an October 27, 1998, report, Dr. B, claimant's treating doctor, stated that the designated doctor should have awarded impairment for pain of six months' duration as well as for loss of ROM.

The hearing officer determined that: (1) claimant reached MMI on August 20, 1998; (2) Dr. B certified that claimant has a 12% IR; (3) the designated doctor certified that claimant's IR is zero percent; and (4) the great weight of the other medical evidence is not contrary to the designated doctor's report.

Sections 408.122(c) and 408.125(e) provide that the report of a designated doctor selected by the Commission is to be given "presumptive weight" and the Commission shall base its determination of MMI and IR on this report unless the "great weight of the other

medical evidence is to the contrary." Great weight means more than an equal balancing or even a preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Whether the great weight of the other medical evidence is contrary to the report of a designated doctor is generally a question of fact for the hearing officer to decide, Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this case, the hearing officer reviewed the medical evidence and the designated doctor's report. She concluded that the great weight of the other medical evidence was not contrary to the designated doctor's report. We conclude that her determinations regarding claimant's zero percent IR are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.* Under these facts, the difference in medical opinion regarding whether claimant should receive more impairment under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association is not enough to overcome the presumption in favor of the designated doctor. *See* Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996.

Regarding whether the designated doctor received claimant's MRI records, the record reflects that the hearing officer forwarded claimant's MRI to the designated doctor in March 1999. Dr. B's November 1998 letter had also been sent to the designated doctor. The designated doctor responded, said he viewed the MRI, and said that his opinion regarding claimant's IR would not change. We perceive no error in that regard. There is also nothing in the record to indicate that the designated doctor failed to consider claimant's medical evidence in this case.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge