

APPEAL NO. 991415

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 June 8, 1999. She (hearing officer) determined that the impairment rating (IR) of the appellant (claimant) is 10%, in accordance with the amended report of the designated doctor, Dr. T. Claimant contends the hearing officer should have determined that his IR is 18%, as initially certified by the designated doctor and also by claimant's treating doctor. Respondent self-insured ("carrier" herein) 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 10%, in accordance with the amended report of the designated doctor. Claimant asks the Appeals Panel to "revisit" its decision in Texas Workers' Compensation Commission Appeal No. 94056, decided February 24, 1994, regarding the use of Table 56 in the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Claimant asserts that the designated doctor correctly applied the AMA Guides in his initial IR certification of November 20, 1998, in which he applied Table 56 and certified an 18% IR. Claimant contends that the 10% IR certified by the designated doctor in his April 5, 1999, amended report is invalid and that the Appeals Panel should adopt the 18% IR of claimant's treating doctor, Dr. P.

The report of a Texas Workers' Compensation Commission (Commission)-selected designated doctor is given presumptive weight with regard to maximum medical improvement (MMI) status and IR. Sections 408.122(b) and 408.125(e). The amount of evidence needed to overcome the presumption is the "great weight" of the other medical evidence. See Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. See Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992.

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 or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Table 56 of the AMA Guides is for impairment due to abnormal motion of the lumbosacral region – flexion/extension, and it states "(Use only if the sum of hip flexion plus hip extension angles is within 10 [degrees] of the straight leg raising [SLR] angle on tightest side –

the validity criterion)." Paragraph 3.3e on page 89 of the AMA Guides provides that the test is invalid and must be repeated if the following criterion is not met: Tightest SLR– (hip flexion plus hip extension is less than or equal to 10 degrees. Page 91 of the AMA Guides provides that if the SLR exceeds total sacral (hip) motion by more than 10 degrees the test is invalid and should be repeated. Figure 83c on page 77 of the AMA Guides states that if the tightest SLR ROM exceeds the sum of sacral flexion and extension by more than 10%, lumbar range of motion (ROM) test is invalid.¹

In Appeal No. 94056, *supra*, the Appeals Panel considered the provisions of the AMA Guides cited by claimant along with the instruction contained in Table 56. In that case, a carrier contended that a claimant's ROM impairment as found by a designated doctor was invalid because the sum of hip flexion and hip extension was 60 degrees and the SLR angle on the tightest side was 49 degrees, resulting in a difference of 11 degrees, but the hearing officer held that the ROM testing was valid because the tightest SLR (49 degrees) did not exceed the sum of sacral flexion and extension (60 degrees) by 10 degrees and accepted the designated doctor's IR. The Appeals Panel reversed the hearing officer's decision and held that under the AMA Guides lumbar ROM measurements are valid if the sum of hip flexion and extension is within 10 degrees of the tightest SLR angle and that the measurements are invalid if those two measurements are not within 10 degrees of each other. In Texas Workers' Compensation Commission Appeal No. 962163, decided December 13, 1996, the Appeals Panel noted that it had previously held that, with regard to the SLR test on page 91 of the AMA Guides, the word "exceeds" does not only mean "greater than," but refers to more than a 10-degree variation.

In the present case, in his November 20, 1998, initial report, the designated doctor certified that claimant's IR is 18%. In an accompanying report, the designated doctor stated that the IR included impairment for specific disorders of five percent, and impairment for loss of ROM, "abnormal motion," of 14%, which combined to an 18% IR. The designated doctor's worksheet indicates that he added sacral flexion of 43 degrees to sacral extension of two degrees, to arrive at a total sacral motion of 45 degrees. The tightest SLR found by the designated doctor was 25 degrees. The designated doctor apparently subtracted the total sacral motion (45 degrees) from the 25 degrees for SLR, and arrived at a negative number: -20. Because this figure was not literally "greater than" 10 degrees, the designated doctor apparently determined that the SLR validity criterion was met.

In a March 30, 1999, letter, a Commission employee informed the designated doctor that the Commission, through the Appeals Panel, determined that "the term 'exceeds' on the SLR formula and validity criterion does not just mean greater than 10 degrees." The designated doctor was asked whether the 18% IR would change, based on the consideration of this information. On April 5, 1999, the designated doctor filed an amended Report of Medical Evaluation (TWCC-69) certifying a 10% IR. In an accompanying letter, the designated doctor, apparently following the Appeals Panel's interpretation of "exceeds," stated that claimant's

¹In Texas Workers' Compensation Commission Appeal No. 94131, decided March 16, 1994, the Appeals Panel noted that the reference to 10% in Figure 83c was inconsistent with the written text of the AMA Guides and that the comparison factor should be 10 degrees.

lumbar flexion and extension measurements are invalid and that his amended IR is 10%. The 10% IR included impairment for specific disorders (5%) and loss of lateral ROM (5%).

In a September 16, 1998, TWCC-69, Dr. PE, an independent medical examination doctor, stated that claimant's IR should be five percent. This IR included impairment for specific disorders, only. Dr. PE stated that claimant's lumbar flexion and extension ROM testing was invalid and that lateral flexion was normal. In a March 25, 1999, TWCC-69, Dr. P, claimant's treating doctor, certified that claimant's IR is 18%. That IR included impairment for specific disorders (7%) and loss of ROM (11%), which Dr. P stated combined to 18%.

Claimant did not testify. Dr. V testified that the Appeals Panel's decision in Appeal No. 94056, *supra*, and its interpretation therein of the word "exceeds" from Table 83c of the AMA Guides, is incorrect. Dr. C testified that he agreed with the Appeals Panel's interpretation of the word "exceeds."

The hearing officer determined that: (1) on November 20, 1998, the designated doctor certified an 18% IR based on Table 56; (2) the designated doctor's use of Table 56 "included the interpretation of the word 'exceeds' to include 'greater than' [ten degrees] and not 'within' [ten degrees] of the sum of the hip flexion and hip extension"; (3) on March 30, 1999, the Commission sent the designated doctor a letter asking for clarification regarding Table 56 and the use of the term "exceeds"; (4) on April 5, 1999, the designated doctor filed an amended TWCC-69 certifying a 10% IR; (5) the great weight of the other medical evidence is not contrary to the designated doctor's report; and (6) claimant's IR is 10%.

Appeal No. 94056, *supra*, is dispositive of claimant's contention concerning whether he met the SLR test and we decline to "revisit" this determination. We conclude that since the sum of hip flexion and hip extension (45 degrees) was not within 10 degrees of the SLR angle on the tightest side (25 degrees) claimant did not meet the SLR validity criteria. Therefore, in his initial November 20, 1998, report, the designated doctor initially erred in assigning 14% impairment for loss of lumbar flexion and extension ROM. We conclude that the hearing officer did not err in determining that the designated doctor's amended report is entitled to presumptive weight. The determination that the designated doctor's amended report and 10% IR is not contrary to the great weight of the medical evidence is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge