

APPEAL NO. 991427

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 June 7, 1999. In response to the issue at the CCH, the hearing officer determined that claimant's impairment rating (IR) is three percent. This was in accordance with the report of Dr. R, the designated doctor selected by the Texas Workers' Compensation Commission (Commission). On appeal, appellant (claimant) contends the hearing officer incorrectly determined that his IR is three percent and asserts that the great weight of the other medical evidence is to the contrary. Respondent (carrier) responds that the hearing officer properly accorded presumptive weight to the report of the designated doctor.

DECISION

We affirm.

Claimant contends the hearing officer erred in according presumptive weight to the designated doctor's report. Claimant asserts that he gained weight since he sustained his compensable injury, that the weight gain is permanent and should be included in his IR, and that the designated doctor judged him because of his size. Claimant contends that the designated doctor's examination was very brief and that the hearing officer should have considered the evidence from Dr. P.

It was not disputed that claimant's maximum medical improvement (MMI) date is October 21, 1998. Claimant testified that he sustained his compensable injury carrying a table. He said he has been treated with medications and physical therapy, and that he has not had surgery. Claimant testified that the designated doctor did not spend very much time examining him, that his treating doctor's IR examination was much longer, that he can no longer perform the manual labor he was doing at the time of his injury, and that he has gained 60 pounds since the date of injury.

Dr. P, claimant's treating doctor, certified that claimant's IR should be 18%. Dr. P's 18% IR consisted of 14% impairment for loss of range of motion (ROM) and five percent impairment for specific disorders. Dr. P said the specific disorders impairment was for sacroiliitis and early degenerative disc disease. In an October 21, 1998, report, Dr. P said:

The client's massive obesity is probably contributing greatly to a lot of his current medical problems. [If he ever got down to] anywhere near an appropriate, ideal weight, a lot of his symptoms may improve and his [IR] may be a lot less than what it is now.

A June 1997 MRI report states that there is no evidence of acute disc herniation; that there were early degenerative changes at L2-3 and L4-5; and that there was "some type of soft tissue density at T11." In a December 11, 1998, letter, the designated doctor stated that claimant said he was told his x-rays and MRIs showed nothing abnormal; that

claimant exhibits good lumbar mobility despite his weight, "which is a limiting factor"; that lumbar flexion was invalidated by the straight leg raise (SLR) test; that his ROM was limited due to claimant's "remarkable obesity"; and that claimant is fit to return to work. The designated doctor's three percent IR is for loss of lateral flexion ROM, with no impairment given for specific disorders. In a February 16, 1999, letter, Dr. P stated that claimant's IR should include impairment for specific disorders and that the designated doctor "subjectively invalidated [ROM] findings because of his restrictions were all due to his obesity." (Emphasis in original.) In a March 9, 1999, letter to a Commission dispute resolution officer, the designated doctor stated that he reviewed enclosed medical documentation; that "there is no evidence that [claimant] was significantly hurt in the workplace"; and that "the finding of sacroiliitis and degenerative disc disease cannot be grounds for a Table 49 based award per the AMA Guides. The patient's excessive weight can account for all of his symptoms."

The report of a Commission-selected designated doctor is given presumptive weight with regard to MMI status and IR. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption is the "great weight" of the other medical evidence. 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. 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 great weight and preponderance 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.

The hearing officer determined that the findings of the designated doctor are not contrary to the great weight of the other medical evidence. The fact that claimant's treating doctor gave a different IR does not mean that the great weight of the other medical evidence is contrary to the designated doctor's report. There is nothing in the record to indicate that the designated doctor did not consider claimant's compensable injury when certifying the IR in this case. There is also nothing in the record to indicate that the hearing officer did not consider the evidence in the record. Claimant complains that the designated doctor exhibited bias and did not spend enough time to do a complete examination. Claimant agreed that the designated doctor asked him to bend and raised his legs while he was lying down. The hearing officer could find from the evidence that the designated doctor's report indicates that he reviewed claimant's medical records, examined claimant, and considered what impairment claimant had due to the injury. We perceive no error.

Claimant states that the designated doctor should have awarded impairment due to “permanent” weight gain. Section 401.011(23) defines “impairment” to mean “any anatomic or functional abnormality or loss existing after [MMI] that results from a compensable injury and is reasonably presumed to be permanent.” We note that claimant’s treating doctor did not include any impairment for weight gain. The designated doctor rated the impairment that he found to be due to the compensable injury. The hearing officer reviewed the evidence and determined that the designated doctor’s IR is entitled to presumptive weight. We perceive no error.

We note that if a claimant aggravates a preexisting condition, impairment may be awarded for that aggravated condition. However, Dr. R indicated that he did not consider claimant’s disc disease and sacroiliitis to be a lumbar intervertebral disc or other soft tissue lesion warranting a rating under Table 49. The designated doctor attributed claimant’s symptoms or conditions to his weight. The hearing officer considered the designated doctor’s report and the medical evidence on this issue. In this regard, the hearing officer noted that the IR “must be assessed based on the compensable injury alone.” We perceive no error in this case.

We affirm the hearing officer’s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge