

APPEAL NO. 991550

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 July 8, 1999. With respect to the sole issue before her, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 14%. The claimant appeals, urging that her IR is 33% and that the decision of the hearing officer should be reversed. The respondent (carrier) replies that the 14% IR given by the designated doctor is not contrary to the great weight of the other medical evidence and the decision should be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant reached statutory maximum medical improvement (MMI) on July 19, 1998, and that Dr. W was the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant testified that she sustained an injury to her left upper extremity, from the elbow to the tip of her index finger, on _____. The injury occurred when the claimant was operating a rivet machine which malfunctioned, catching her left index finger and punching a hole completely through her finger. In an effort to free herself from the machine, she injured her left hand, wrist, and elbow. The claimant sought medical treatment with Dr. G. Dr. G performed three surgeries: a tendon release in July 1997, elbow surgery in February 1998, and a left carpal tunnel release in June 1998. On August 4, 1998, Dr. G assigned the claimant a 33% IR. This IR included range of motion (ROM) ratings for the index finger, wrist, and elbow, combining to a whole person impairment of 22%, and ROM for the shoulder which combined to a 14% whole person IR.

On November 18, 1998, the designated doctor, Dr. W, assigned a two percent IR, rating only the claimant's left index finger. Dr. W stated that he did not see a relationship between the claimant's operative procedures and the compensable injury, and he did not include wrist and elbow ROM impairments in his assessment. On January 19, 1999, Dr. G sent a letter to the Commission indicating that he disagreed with Dr. W's IR because it did not include a rating for the wrist and elbow. In response to the letter, Dr. W reexamined the claimant on March 13, 1999, and assigned a three percent IR, again refusing to assign any impairment for the wrist and elbow. On April 19, 1999, a benefit review officer wrote to Dr. W, informing him that the hand, wrist, and elbow were part of the compensable injury and should be rated. On April 26, 1999, Dr. W indicated that the claimant has 19% upper extremity impairment for ROM deficits of the elbow and wrist, which calculates to an 11% whole person impairment of the whole body, not including the previously assigned impairment for the finger. Using the combined values tables from the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), the IR given by Dr. W is 14%, which includes the wrist, elbow, and finger.

An IR is “the percentage of permanent impairment of the whole body resulting from a compensable injury.” Section 401.011(24). Impairment is defined as “any anatomic or functional abnormality or loss existing after [MMI] that results from a compensable injury and is reasonably presumed to be permanent.” Section 401.011(23). Section 408.125(e) provides that the designated doctor’s IR has presumptive weight which can be overcome only if the great weight of the other medical evidence is to the contrary.

The claimant contends that her IR is 33%. According to the claimant, Dr. G did a more thorough examination and his IR accurately reflects all of the damage she has suffered as a result of the injury. The claimant testified that she has no use of her arm because she has no feeling from her elbow to her left index finger. In Texas Workers' Compensation Commission Appeal No. 94075, decided February 28, 1994, the Appeals Panel stated that, even though the time spent with the designated doctor will almost never equal the time spent with the treating doctor, the 1989 Act provides presumptive weight to the report of the designated doctor. The hearing officer indicates in her Statement of the Evidence that the only evidence contrary to the designated doctor’s IR is Dr. G’s report, which is erroneous as it includes a noncompensable part of the body, the shoulder. The record does not indicate any dispute as to the extent of the injury. The hearing officer considered all of the medical evidence presented and did not find that the other medical evidence rose to the level of great weight against the IR assigned by Dr. W. The report of the designated doctor indicates that he used the proper AMA Guides and properly applied them to the compensable injury. While the hearing officer did not make a specific finding that the designated doctor's report was given presumptive weight, we can infer that the hearing officer found that the report of Dr. W is valid and is entitled to presumptive weight. The determination of the hearing officer that the claimant’s IR is 14% is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (Tex. 1951).

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge