

APPEAL NO. 991641

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 13, 1999, a contested case hearing was held. With regard to the only issue before her, the hearing officer determined that appellant's (claimant) impairment rating (IR) was two percent as assessed by the designated doctor, whose report was not contrary to the great weight of other medical evidence.

Claimant appeals, contending that respondent's (carrier) doctor assessed a 13% IR and the treating doctor assessed a 14% IR, that the designated doctor had failed to assess a rating from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and had failed to assess a rating for range of motion (ROM). Claimant contends that the designated doctor's IR was contrary to the great weight of other medical evidence. Claimant requests that we reverse the hearing officer's decision and render a new decision adopting either the 13% or 14% IR. Carrier responds, urging affirmance.

DECISION

Affirmed.

Claimant testified that he had injured his low back unloading a truck for the employer, that he continues to receive treatment in the form of medication, physical therapy and injections for his back and that he has not had any spinal surgery. The parties stipulated that claimant sustained a compensable (low back) injury on _____ (all dates are 1998 unless otherwise noted), that claimant reached maximum medical improvement (MMI) on October 21st and that Dr. H is the Texas Workers' Compensation Commission (Commission)-appointed designated doctor.

In evidence is a Report of Medical Evaluation (TWCC-69) dated November 10th, and narrative dated October 21st, from Dr. B, a carrier doctor, certifying MMI and assessing a 13% IR based on a five percent impairment from Table 49, Section II B, of the AMA Guides, and eight percent impairment for loss of ROM. No impairment was assessed for motor/sensory dysfunction. Also in evidence is a report from Dr. N, who apparently did the ROM measurements for Dr. B and who assessed a 14% IR in a brief report dated October 27th. Claimant's treating doctor is Dr. A, who, on a TWCC-69 dated December 1st and narrative report dated November 17th, certified MMI and assessed a 14% IR based on five percent impairment from Table 49, Section II B and 12% total impairment for loss of ROM for both the lumbar and thoracic spine, which he combines for a 14% whole body IR. (Section II B of Table 49 provides for a rating for a disc or lesion "[u]noperated with medically documented injury and a minimum of six months documented pain, recurrent muscle spasms or rigidity associated with none to minimal degenerative changes on structural tests.")

An MRI of the lumbosacral spine performed on April 23rd shows a "small central contained focal disc protrusion of a degenerated disc at L4-5. Small central focal disc protrusion of a degenerated bulging disc at L5-S1" A lumbar myelogram performed August 5th shows "no significant alteration of the thecal sac or nerve roots"

Dr. H, the designated doctor, in a TWCC-69 and narrative report, both dated December 29th, certified MMI and assessed a two percent IR based on right and left lateral flexion loss of ROM. Dr. H invalidated flexion and extension ROM "based on the straight leg raise [SLR] validation rule." Dr. H commented that his evaluation showed "no specific disorders for the lumbar spine that would be ratable." Dr. H goes on to say that "it cannot be determined whether these conditions [perhaps referring to the degenerative disc bulges] were present before or after the date of injury." Dr. H found no sensory or motor deficits. Dr. H referenced the reports and IRs of Dr. B, Dr. N and Dr. A.

Basically the points of disagreement are whether Dr. H should have assessed an impairment from Table 49 as did Dr. B and Dr. A, and claimant's ROM studies. Carrier submitted evidence which questions Dr. B's and Dr. A's ROM studies and points out the wide discrepancy between the SLR measurements performed by different evaluators at different times. The hearing officer commented that Dr. H specifically declined to give a rating from Table 49 and said that the "question of whether to give any rating for specific disorders is a matter of expert medical opinion."

Section 408.125(e) provides that the report of a Commission-selected designated doctor shall have presumptive weight and that the Commission shall base the IR on that report unless it is contrary to the great weight of the other medical evidence. The Appeals Panel has described the "great weight of the other medical evidence" as not merely equally balancing evidence or a preponderance of the evidence (Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992) and has held that no other doctor's report is accorded such special, presumptive status (Texas Workers' Compensation Commission Appeal No. 92336, decided August 31, 1992). The Appeals Panel has further stated that "[a] difference in medical opinion is not a sufficient basis to discard a designated doctor's report." Texas Workers' Compensation Commission Appeal No. 950166, decided March 14, 1995.

Dr. H did not award an impairment from Table 49, while both Dr. B and Dr. A did. Whether the minimal degenerative changes and mild disc bulge in the lumbar spine were caused by the compensable injury is a matter of medical judgment. Dr. H was obviously of the opinion that the abnormalities were not caused by the injury in question and, in his discretion, declined to assess an impairment for those findings. We find that the hearing officer's decision that the great weight of other medical evidence was not contrary to the designated doctor's report is supported by the evidence.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge