APPEAL NO. 991695

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On July 7, 1999, a hearing was held. She (hearing officer) determined that appellant's (claimant) impairment rating (IR) is 14% as set forth by the designated doctor, Dr. P in his amended report dated May 5, 1997. Claimant asserts that his IR should be increased and that the designated doctor's report of May 5, 1997, is not supported by the great weight of medical evidence, referring to medical evidence "I presented at the CCH [contested case hearing]." Respondent (carrier) did not appeal and did not assert that the designated doctor's reports providing an eight percent IR should have been accorded presumptive weight, but carrier did reply to claimant's appeal saying that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) when, he testified, his right knee popped as he turned while carrying a box he was loading for a passenger. The date of this injury was _____. The hearing officer lists operations to claimant's right knee as occurring on July 2, 1993; October 11, 1994; October 17, 1995; May 8, 1996; August 14, 1996; and December 2, 1997. Dr. D, claimant's treating doctor, lists claimant's "major" operations as including four of the above, omitting the 1993 and May 1996 surgeries. The 1997 surgery was a total knee replacement.

We note that both the transcript of the hearing and the hearing officer's Statement of Evidence extensively address the distinctions between the designated doctor's January 12, 1995, report providing eight percent IR and his March 11, 1999, report also providing eight percent IR as compared to his May 5, 1997, report providing 14% IR. The hearing officer stated that an amended designated doctor's opinion could be given presumptive weight if it was provided for a proper reason and in a reasonable time. We agree with that statement; while the appeal does not address a question of which of the designated doctor's opinions should be given presumptive weight, we note that continued surgeries (six in a period of four and one-half years) of the same joint may constitute some evidence that the time was reasonable to seek another report based on the continuous nature of the surgery being performed. *Also see* Texas Workers' Compensation Commission Appeal No. 980685, decided May 20, 1998 (Unpublished), which indicated that some injuries may require surgery in increments over an extended period of time.

The medical evidence submitted by claimant consisted of reports from his treating doctor, Dr. D. Dr. D's most recent report dated April 30, 1999, addressed Dr. P's most recent report which had reduced claimant's IR from 14% to eight percent, and said he disagreed with that reduction. Earlier, on February 19, 1999, Dr. D reported that claimant had an impairment evaluation which showed a 17% IR; this was reported in a short memo without using a Report of Medical Evaluation (TWCC-69). (Dr. D did refer to the testing as

having taken place on December 7, 1998.) The only IR report provided in claimant's submission is dated December 7, 1998; it refers to Table 36 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association in assigning 20% based on "knee replacement arthroplasty" and 28% for range of motion (ROM) limitations based on flexion/extension. The resulting 42% for the knee was then translated to a 17% IR for the whole person. However, Table 36 lists 10 disorders of the knee but only allows ROM to be combined with the amount of IR for the disorder in seven of the 10. One of the "disorders" listed is "knee replacement arthroplasty" for which a 20% IR is allowed, but it does not provide for combining that 20% with any IR for ROM. Texas Workers' Compensation Commission Appeal No. 971056, decided July 21, 1997, also interprets Table 36 as providing three disorders which do not combine with ROM limitations. As a result, there would be no basis for determining that the 17% IR of Dr. D constitutes the great weight of medical evidence and that such medical evidence is contrary to the designated doctor's opinion in regard to IR.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. With claimant's assertion that Dr. D's 17% IR, and his reports based on that IR, constitute the great weight of medical evidence and with that IR appearing to be flawed according to Table 36, the hearing officer's finding that the great weight of medical evidence was not contrary to the designated doctor's amended report of May 5, 1997, which provided an IR of 14%, is sufficiently supported by the evidence. (We note that the hearing officer, in giving presumptive weight to the designated doctor's report of May 5, 1997, rejected a designated doctor's report provided in 1999 which was subsequent to claimant's total knee replacement of December 2, 1997; in that latter report, the designated doctor found that the IR should be reduced to eight percent.)

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge