

APPEAL NO. 991758

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 July 19, 1999. The issue at the CCH involved the impairment rating (IR) to be assigned to the appellant, who is the claimant, for her compensable injury of _____.

The hearing officer gave presumptive weight to the report of the designated doctor that the claimant's IR was 12%, which was not overcome by the great weight of contrary medical evidence.

The claimant has appealed, and argues, as she did at the CCH, that her ultimate IR should be a combination of that of the designated doctor and a doctor she saw to obtain another IR. The combination of the portions of each report with which she agrees would be 20%. The respondent (carrier) responds that this cannot be done, and the designated doctor's report must be accepted or rejected as a whole.

DECISION

Affirmed.

The claimant was injured in a motor vehicle accident while employed as a courier by (employer). The parties agreed she reached maximum medical improvement on January 15, 1999. Claimant said that she still had severe headaches from her accident. She was treated for cervical radiculopathy and lumbar strain.

Claimant's treating doctor, according to the benefit review conference report, assigned a 31% IR, but his report was not offered into evidence. The claimant was examined by the designated doctor, Dr. H, who assigned a 12% IR to her cervical and lumbar injuries. He rated specific conditions for the cervical and lumbar areas, and gave some percentage for cervical range of motion (ROM) deficits, but found that the lumbar ROM was invalid due to inconsistencies in the seated, and supine, straight leg raising tests. Claimant went to Dr. HR, who has also served as a designated doctor on workers' compensation cases, albeit not in that capacity for claimant. He found no basis for rating specific conditions for either the cervical area or the lumbar area, but did assign ROM deficit IRs for both regions. His total was 14%. The lumbar ROM portion was eight percent.

The report of a Texas Workers' Compensation Commission appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption, a "great weight," is more than a preponderance, which would be only greater than 50%. 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. Texas Workers' Compensation Commission Appeal No. 92164, decided June 5,

1992. We decline here, as we declined in Texas Workers' Compensation Commission Appeal No. 950558, decided May 24, 1995, to resolve the IR issue on appeal by "coming up with a patchwork of the various elements" of the designated doctor's report. The Appeals Panel has held that a hearing officer does not pick and choose parts of the designated doctor's report on an IR. See Texas Workers' Compensation Commission Appeal No. 94646, decided July 5, 1994; Texas Workers' Compensation Commission Appeal No. 951594, decided November 8, 1995. There is no statutory basis for the combination suggested by the claimant.

The hearing officer's decision is factually and legally supported, and we accordingly affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge