APPEAL NO. 991765

On June 1, 1999, a contested case hearing (CCH) was held, with the record closing on July 21, 1999. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the CCH was the impairment rating (IR) of appellant (claimant). Claimant requests that the hearing officer's decision that his IR is 24% be reversed and that a decision be rendered that his IR is 50%. Respondent (carrier) requests affirmance.

DECISION

Affirmed.

On _____, claimant was injured at work in a gas pipeline explosion. Medical reports reflect that he sustained extensive body burns, a fractured left humerus, and a dislocated left shoulder. He has been treated for his burns, including, among other things, surgery on his hands, and has had surgery on his left shoulder and left humerus. The parties stipulated that claimant reached maximum medical improvement (MMI) on September 25, 1995.

Dr. I, who operated on the left shoulder and humerus, reported in May 1996 that claimant has a seven percent IR. Dr. X, who examined claimant at carrier's request, reported in May 1996 that claimant has a 15% IR. Dr. S, D.C., is claimant's treating doctor. The Texas Workers' Compensation Commission (Commission) chose Dr. (Dr. G), D.C., as the designated doctor. Dr. G examined claimant in July 1996 and reported on July 10, 1996, that claimant has a 24% IR. Dr. S reported in February 1997 that claimant has a 70% IR. At claimant's request, a benefit review officer (BRO) sent Dr. S's IR report to Dr. G for his review and asked him if it remained his opinion that claimant has a 24% IR. Dr. G wrote in October 1997 that the IR assigned by the "performing evaluator," which we understand is a reference to Dr. S, was not substantiated by the medical records. Dr. G did not indicate that he was making any changes to the IR he assigned to claimant. In December 1998, claimant sent a list of questions and medical reports to a BRO and requested that the BRO send those questions and medical reports to Dr. G. The BRO did as requested, with the addition of several other questions. In response to the December 1998 inquiry, Dr. G filed an amended report in January 1999 in which he assigned claimant a 50% IR and stated that it was not necessary to reexamine claimant. At carrier's request, Dr. (Dr. W) reviewed claimant's medical records and reported in February 1999 that the appropriate IR for claimant's injury would be 25%.

Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. The Appeals Panel has stated

that, for a proper reason and within a reasonable period of time, a designated doctor may amend his IR report. Texas Workers' Compensation Commission Appeal No. 970252, decided March 31, 1997. *See also* Texas Workers' Compensation Commission Appeal No. 980355, decided April 6, 1998, where an amended IR report by the designated doctor made more than three years after the designated doctor's initial report was found not to be within a reasonable period of time, although the initial report had not included all of the compensable injury.

In the instant case, the hearing officer made findings of fact regarding the IRs that have been assigned to claimant by doctors and the written requests to and responses from Dr. G. The hearing officer also found that the time period between Dr. G's initial report and his amended report was not reasonable under the facts of the case, noting that over three years had passed since claimant reached statutory MMI and two and one-half years had passed since Dr. G's initial certification. In addition, the hearing officer found that the great weight of the medical evidence is not contrary to Dr. G's initial report of July 10, 1996, and she concluded that claimant's IR is 24%. Claimant contends that the hearing officer's findings and conclusion are so against the great weight and preponderance of the evidence as to be manifestly unjust and that we should render a decision that claimant has a 50% IR.

The disputed issue of claimant's IR presented a fact question for the hearing officer to determine from the evidence presented. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence, including conflicts in the medical evidence. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact. Appeal No. 950084. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge