

APPEAL NO. 991889

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 August 9, 1999. She (hearing officer) determined that the appellant's (claimant) correct impairment rating (IR) was 13% as certified by Dr. P, the designated doctor selected by the Texas Workers' Compensation Commission (Commission), in an amended report. The claimant appeals this determination, expressing her disagreement with it. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury (lumbar herniation) on _____. She underwent surgery on December 28, 1995, and testified that for a while she seemed to have improved, but thereafter her condition worsened.

Dr. P completed a Report of Medical Evaluation (TWCC-69) on March 16, 1994, in which he certified an 11% IR, composed of seven percent for a specific disorder of the lumbar spine (unoperated disc lesion) and four percent for loss of lumbar range of motion (ROM). On March 27, 1996, Dr. G completed a TWCC-69 in which he certified a 25% IR, comprised of 10% for a specific disorder of the lumbar spine (operated disc lesion) and 15% for loss of ROM.¹ On March 31, 1997, Dr. P completed a new TWCC-69 in which he certified a 13% IR, comprised of 10% for a specific disorder of the lumbar spine (operated disc lesion) and three percent for loss of ROM (lateral flexion). There was no challenge raised by the carrier that this amendment was not done for a proper reason in a reasonable amount of time.

Section 408.125(e) provides that the report of a designated doctor selected by the Commission is entitled to presumptive weight and the Commission shall base its determination of IR on this report "unless the great weight of the other medical evidence is to the contrary." No other report is accorded this status. Only medical evidence, not lay opinion, can be weighed against the report of the designated doctor. We have also held that the great weight is more than an equal balancing of the medical evidence or even a preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. As the hearing officer pointed out, the only difference between Dr. P's amended report and Dr. G's report is in the ROM component of the respective IRs. When Dr. P examined the claimant the second time, he invalidated lumbar flexion and extension based on the straight leg raise test, but assigned some IR for

¹We observe that the combined values chart of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) establishes a 24% whole body IR for this combination of IRs.

lateral flexion and extension. Dr. G, on the date of his examination, found all lumbar ROM tests valid. The hearing officer found that the differences in the two certifications amounted to a simple difference in medical opinions and that Dr. G's report did not rise to the level of the great weight of the other medical evidence contrary to Dr. P's amended report.

In her appeal, the claimant asserts that Dr. P did not examine her "properly" and took, at most, two minutes, while Dr. G spent much more time with her. She also challenges the correctness of Dr. P's ROM based on an examination of his worksheet. The Appeals Panel has in the past observed that the time spent in a designated doctor's examination will almost never equal that spent by treating doctor. Texas Workers' Compensation Commission Appeal No. 93031, decided February 25, 1993. Such disparities do not compel a finding that the great weight of the other medical evidence is contrary to the report of the designated doctor. Even accepting at face value the claimant's assertion of the time spent with the claimant, we note that this was Dr. P's second examination of the claimant and the claimant produced no medical evidence to show why the time spent by Dr. P rendered his examination medically inadequate. We have also examined Dr. P's worksheet and find that it complied with the AMA Guides in not awarding flexion and extension because of the results of the straight leg raising test, but in awarding lateral flexion. See Texas Workers' Compensation Commission Appeal No. 950558, decided May 24, 1995, where we held that the straight leg raise test only invalidates flexion and extension, but not lateral flexion.

Whether the great weight of the other medical evidence is contrary to the report of the designated doctor is a question of fact for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. This determination is, in turn, subject to reversal on appeal only if it so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer weighed the other medical evidence in this case, particularly the report of Dr. G, and concluded that it did not defeat the statutory presumptive weight afforded Dr. P's opinion. Under our standard of review, we find the evidence sufficient to support this determination.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge