APPEAL NO. 991940

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On August 18, 1999, a contested case hearing (CCH) was held. With regard to the only issue before him, the hearing officer determined that appellant (claimant) had a 14% impairment rating (IR), as assigned by the designated doctor whose opinion was not contrary to the great weight of other medical evidence.

Claimant timely filed an appeal (on a Texas Workers' Compensation Commission (Commission)-provided response form) asserting her treating doctor's 19% IR, and her testimony, constituted the great weight of other medical evidence and that the designated doctor had failed to assess an impairment "for motor and sensory loss" and therefore had not rated the entire injury. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Subsequently, some three weeks after the date for timely filing an appeal, claimant submitted an additional appeal, greatly expounding and expanding her original appeal, citing that she had originally used "the wrong incomplete claimant's response forms." We hold that the supplementary appeal is untimely and consequently we have no jurisdiction to consider it. Respondent (self-insured) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Claimant had been employed in a secretarial position with a state agency. The parties stipulated that claimant sustained a compensable injury on _____, and the parties apparently agreed that claimant reached maximum medical improvement (MMI) on July 28, 1997, by operation of law (Section 401.011(30)(B)) which the parties also referred to as statutory MMI. Although not entirely clear, the compensable injury apparently consisted of bilateral carpal tunnel syndrome (BCTS) and a psychological component. Claimant has not had surgery for the BCTS.

In evidence are a number of reports and IRs made before the MMI date, including a 14% IR by Dr. O dated January 10, 1996, which does not have a psychological component, and a Report of Medical Evaluation (TWCC-69) dated March 7, 1996, from Dr. P stating claimant is not at MMI. Dr. W, claimant's treating doctor, in a TWCC-69 and narrative, both dated July 17, 1997 (which we note is 11 days prior to the subsequently established MMI date), assessed a 15% IR as follows:

STEPS

1. Normal grip strength of hand for female doing manual labor is 22.0 kilograms.

2. [Claimant] measured abnormal grip strength for **each** injured hand is 40 pounds. 40 pounds = 18 kilograms.

3. Therefore:

$$\frac{22kg - 18kg}{22kg} = \frac{4}{22} = 18\% \text{ Strength Loss Index}$$

4. 18% Strength loss index is considered to be 10% Upper extremity impairment.

5. At the discretion of the treating physician the 10% UE is reduced to 8%.
6. Table 3, page 20, 8% Upper Extremity converts to 5% whole person.

7. 5% Right Upper Extremity Impairment combined with 5% Left Upper Extremity is **10% Whole Person Impairment**.

In addition, Dr. W apparently assessed six percent right and left upper extremity impairment for the BCTS and an eight percent "permanent mental impairment." How these are combined to reach a 15% IR is not clear. Further, on the TWCC-69, Dr. W certifies MMI on July 6, 1997, while on the last page of the narrative Dr. W states that claimant "had not reached functional MMI."

Dr. G was appointed as the Commission-selected designated doctor and in two TWCC-69's (one dated September 9, 1997, and the other September 16, 1997) and narrative dated September 9th, assessed a 14% IR. Dr. G diagnosed claimant with unoperated BCTS, "Morbid obesity" and clinical depression. (Claimant argues that diagnosis shows a bias against overweight patients.) Dr. G assesses a "7% impairment to the upper extremities due to loss of range of motion [ROM] in the wrist which translates to 4% impairment of the whole person" and 10% impairment for the clinical depression which combines to a 14% IR. Dr. W, in a letter to the Commission dated February 17, 1998, cites his own qualifications and disagreed with Dr. G. The Commission sent Dr. W's February 17, 1998, letter to Dr. G for comment. Dr. G replied by letter dated April 8, 1998, stating:

> The second point that [Dr. W] raised was that anyone with a unilateral [BCTS] should receive at least 5% impairment for this, but because of the conflicting examination findings of the hand glove type distribution of the symptoms of tingling and numbness, I was not totally convinced that this examinee had [CTS] and therefore, awarded the loss of [ROM] because otherwise, I would have given the patient a zero impairment. In [Dr. W's] third paragraph, I did indeed check the strength and the sensation in the extremity of this patient and found the confusing situation of a[n] abnormal

> dermatone pattern that did not fit [CTS] and therefore, the patient was not awarded anything for [CTS] per se.
>
> You will note however, I did award the patient 10% impairment to the whole person as a result of her psychiatric disorder or depression and in my opinion the two were related to the on the job injury.

Also in evidence is a report from Medical Evaluators, Inc., which supposedly purports to be a "record review" and critique of the various medical reports signed by a Mr. A, who, apparently everyone agrees, is not a doctor and possibly not even a health care practitioner as defined in Section 401.011(21). This report is mentioned only insofar as Dr. W testified at the CCH and referenced much of his testimony on Mr. A's report and purported 10% IR. Clearly, Mr. A did not examine claimant, and equally clearly did not purport to assess an IR stating "I am not providing an [IR]." Basically, Mr. A found fault with all the IRs, including questioning whether Dr. W had even used the mandated version of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. Mr. A stated that he thought Dr. O's 14% IR was closest to being correct.

Dr. W testified at the CCH and argued that Dr. G had failed to rate sensory loss and that an EMG done after Dr. G's examination proved that claimant had BCTS. Dr. W's testimony was imprecise, stating he had assessed 12% impairment for sensory loss, eight percent for motor stress loss, five percent or 10% for psychological component which combined to give an 18% or 19% IR or a 23% IR. The hearing officer notes that the only TWCC-69 from Dr. W was "dated July 17, 1997, showing a 15% [IR]."

Section 408.125(e) provides that the report of the Commission-selected designated doctor shall have presumptive weight and that the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The Appeals Panel has said with respect to "presumptive weight" that it is not just equally balancing evidence or a preponderance of the evidence that can outweigh the designated doctor's report but only the "great weight" of other medical evidence; that the designated doctor occupies a unique position under the Texas workers' compensation system; and that no other doctor's report, including the report of a treating doctor, is accorded this special presumptive status. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. From our review of the evidence, we do not find a sufficient basis to conclude that the great weight of the medical evidence was contrary to Dr. G's report which was entitled to presumptive weight.

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:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Susan M. Kelley
Appeals Judge