APPEAL NO. 991941

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 28, 1999. He (the hearing officer) determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 11, 1997, with a 10% impairment rating (IR) as certified by Dr. S, a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals these determinations, expressing her disagreement with them and urging that the report of Dr. K, her treating doctor, assigning a 29% IR and presumably an MMI of August 5, 1998, be adopted. 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 on _____. She testified that the injury extended to her back, neck, right ankle, and right shoulder. On September 18, 1997, Dr. K, the treating doctor, completed a Report of Medical Evaluation (TWCC-69) in which he found MMI on September 10, 1997, and assigned an IR consisting of four percent for a specific disorder of the cervical spine, 13% for loss of range of motion (ROM) of the cervical spine, five percent for a specific disorder of the lumbar spine, and five percent for loss of lumbar ROM. On August 12, 1998, Dr. K completed another TWCC-69, based on an examination of August 5, 1998, in which he certified MMI on August 5, 1998, and added three percent for loss of right shoulder ROM. The total IR assigned by Dr. K. was 29%. Dr. N examined the claimant on March 11, 1997, at the request of the carrier. On January 15, 1998, Dr. N completed a TWCC-69 in which he assigned a five percent IR based on diagnoses of resolved cervical, lumbar, right knee, and right ankle strains. The five percent was solely for a specific disorder of the lumbar spine. He certified MMI as of the date of his examination.

On May 28, 1997, Dr. S, the designated doctor, completed a TWCC-69 in which she assigned a 10% IR and MMI on March 11, 1997. The 10% IR consisted of five percent for a specific disorder of the lumbar spine and five percent for loss of lumbar lateral flexion. Dr. S found no neurological impairment of the spine and no loss of ROM of the right shoulder or knee. She found cervical ROM testing invalid and also invalidated lumbar flexion and extension based on the straight leg raise test. She also noted that six out of eight Waddell signs were positive, thus reflecting a "tendency toward symptom magnification." She did not assign any IR for a specific disorder of the cervical spine because she found no residual impairment. On February 8, 1998, the Commission provided Dr. S a critique of her TWCC-69 by Dr. K. The actual critique was not in evidence. On February 26, 1998, Dr. S responded to the Commission that she disagreed with Dr. K's

four percent for a specific disorder of the cervical spine because she considered this to be no more than a subjective complaint of pain without objective clinical verification of permanent impairment. Dr. S also referred to the claimant's symptom magnification and reiterated that she believed the spine ROM measurements were self-limited by the claimant and not clinically valid. She declined to change her IR and found no need to reexamine the claimant. It is not clear whether Dr. K also challenged Dr. S's date of MMI.

Section 408.122(c) and 408.125(e) provide that the report of a designated doctor selected by the Commission is entitled to presumptive weight and the Commission is to base its determination of MMI and IR on this report unless the great weight of the other medical evidence is to the contrary. We have held that the great weight means more than an equal balancing or even a preponderance of the other medical evidence and that only medical evidence, not lay opinion, can be weighed against the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Whether the great weight of the other medical evidence is contrary to the report of the designated doctor is basically a factual determination (Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993), which in turn is subject to reversal on appeal only if that determination is 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 claimant contends that Dr. K's reports constituted the great weight of the other medical evidence contrary to Dr. S's report. Most, but not all, of the difference in the two reports is Dr. K's assignment of an IR for loss of ROM of the spine and right shoulder. Dr. K validated these measurements. Dr. S did not, except for lumbar lateral flexion, and commented on the claimant's symptom magnification. Dr. S found no residual cervical spine impairment and only subjective complaints of cervical pain, while Dr. K concluded otherwise. Dr. S explained the bases for her disagreements with Dr. K. The hearing officer set out in detailed findings of fact the discrepancies in the various ratings and concluded that the great weight of this other medical evidence was not contrary to Dr. S's report. Such differences, we believe, could be construed by the hearing officer as no more than professional disagreements that did not rise to the level of the great weight contrary to Dr. S's report, but were specifically the type of disagreements the 1989 Act intended to resolve by affording presumptive weight to the report of the designated doctor.

Finding it based on sufficient evidence and no error of law, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge