APPEAL NO. 991954

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On August 20, 1999, a contested case hearing (CCH) was held. With regard to the only issue before her, the hearing officer determined that appellant (claimant) had a zero percent impairment rating (IR) as assessed by the designated doctor and that that report was not contrary to the great weight of other medical evidence.

Claimant appeals, asserting that "the preponderance of the medical evidence" was that the IR "should be higher than 0%." Claimant requests that we reverse the hearing officer's decision. Respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on _____, and reached maximum medical improvement (MMI) on August 6, 1996, as certified by the designated doctor. Claimant testified that she was walking on a gravel path, slipped and fell, injuring her left wrist, arm and shoulder. Claimant was seen in a hospital emergency room and subsequently began treating with Dr. AH, who diagnosed sprain injuries of the left shoulder, left forearm and left wrist, and carpal tunnel syndrome (CTS) of the left wrist. Claimant underwent a CTS release in February 1996. Claimant was examined by Dr. GH, carrier's IME doctor, in May 1996, and in a Report of Medical Evaluation (TWCC-69) and narrative dated May 7, 1996, certified MMI and assessed a five percent IR. The narrative mentions prior injuries, one in 1992 and another in January 1995, which were also mentioned at the CCH but apparently have nothing to do with the injury at issue in this case. Dr. GH's five percent IR was based on an eight percent impairment for loss of range of motion (ROM) of the left shoulder (or left upper extremity (LUE)), which translates to a five percent whole person IR. Dr. GH assessed a zero percent impairment for the left wrist.

In a TWCC-69 and narrative dated July 30, 1996, Dr. AH certified MMI and assessed a 15% IR based on four percent impairment for loss of ROM of the left wrist, 14% impairment for loss of ROM of the left shoulder, which combines to be 17% impairment of the LUE, and assessed 10% impairment of the LUE for the CTS, which was combined with the 17% loss of ROM to be 25% impairment of the LUE, "which equates to 15% permanent impairment of the whole person."

The parties stipulated that Dr. W was the designated doctor. In a TWCC-69 and narrative both dated August 6, 1996, Dr. W certified MMI and assessed a zero percent IR. Dr. W's report indicated that he examined the left wrist and left shoulder. Dr. W stated that claimant "was poorly cooperative with testing" and that he could not find any "objective basis to provide impairment." Dr. W specifically noted "no physiologic motor or sensory loss, and no diagnosis related impairment." Dr. W concluded:

> As indicated above, no impairment is given for the shoulder because of the marked voluntary guarding with poor cooperation during the examination. I don't believe that subsequent testing would be valid as well, and do not feel it would be indicated.

Dr. B, in a report dated November 6, 1997, diagnosed "internal derangement, left shoulder" and "tenosynovitis left upper extremity." In a subsequent letter dated February 2, 1998, Dr. B said "the positive EMG study would substantiate a sensory loss and as such, at least a percentage should have been provided for this deficit."

The hearing officer commented on some Appeals Panel decisions, assigned presumptive weight to Dr. W's zero percent IR, and found that the great weight of other medical evidence was not contrary to the designated doctor's opinion. Claimant, in her appeal, simply asserts the hearing officer "erred in each and every finding of fact and conclusion of law. . . ." Section 408.125(e) provides that the report of the Texas Workers' Compensation Commission (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. W's August 6, 1996, 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

_____
Robert W. Potts
Appeals Judge