

APPEAL NO. 992005

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 24, 1999. The single issue at the CCH was the appellant's (claimant) impairment rating (IR). The hearing officer determined that the IR was five percent for the compensable injury as certified by a designated doctor in an amended report. Claimant appeals several findings of fact and conclusions of law, indicating that he did not understand an earlier agreement as to his injury, that he kept medical appointments, that his back is a part of his injury, and that he should be given the 15% assessment which included his back. Respondent (carrier) asserts that claimant raises matters outside the single issue before the hearing officer and that there was sufficient evidence to support the decision of the hearing officer.

DECISION

Affirmed.

The claimant sustained an injury when he fell from a scaffolding at work on _____. The hearing officer found, and the finding is not on appeal, that the claimant had an injury to his right ankle from the incident. A benefit review conference (BRC) agreement was entered into on May 9, 1994, with claimant represented by an attorney, in which it was agreed that the claimant "sustained a compensable injury to the right foot only." A stipulated finding of fact is that the claimant reached maximum medical improvement on July 18, 1994, by operation of the statute. He treated with several doctors for his ankle and eventually saw a Texas Workers' Compensation Commission (Commission)-selected designated doctor, Dr. G, on April 18, 1995, and was determined to have a four percent whole body IR for his lower right extremity. Claimant's treating doctor, Dr. GA, disagreed with Dr. G's rating and stated his assessed IR was 20% for the lower extremity. Subsequently, the claimant had surgery on his right ankle and he contacted the Commission to disagree with Dr. G's IR. Although the carrier objected to referral of the claimant back to Dr. G, following a BRC on August 8, 1996, the Commission sent a letter to Dr. G asking Dr. G to reexamine the claimant. Although an appointment was made for November 8, 1996, no examination was done for unknown reasons. Again on March 18, 1998, an appointment was made but no examination was conducted. The delays and reasons are not abundantly clear from the record; however, claimant was eventually reexamined by Dr. G on July 1, 1998, related to the _____, injury. Dr. G's rating for the right ankle was increased to five percent. In his report, Dr. G also gave a rating for the lumbar spine of 10% which combined totalled 15% for the whole person impairment.

Claimant did not offer any evidence on the BRC agreement or any indication of fraud, newly discovered evidence, or other good and sufficient cause for it not being binding on the parties. Section 410.030. As indicated at the time of the agreement that only the

right foot was injured, the claimant was represented by an attorney and no basis was shown to finding that it was not binding. Texas Workers' Compensation Commission Appeal No. 961922, decided November 20, 1996. The hearing officer determined that to the extent that Dr. G assigned impairments for limitations that were not part of the compensable injury, as was covered by the 1994 BRC agreement, those impairments would be disregarded. He found that the five percent IR for the lower extremity injury was not against the great weight of other medical evidence.

There is no appeal from the hearing officer's acceptance of the five percent IR for the right lower extremity as certified in Dr. G's subsequent report of July 1, 1998. Rather, claimant's appeal urges that his back should be included and that he be given the 15% as stated by Dr. G. Thus, with a valid agreement that the claimant's injury was to the right foot only, the remaining question is whether Dr. G's rating for that agreed compensable injury was contrary to the great weight of other medical evidence and thus overcoming the presumptive weight accorded a designated doctor's report. Section 408.125. While Dr. GA was not in agreement with Dr. G's initial report regarding the lower extremity, the hearing officer was not obligated to consider it the great weight of the medical evidence and thus reject the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. To the contrary, we conclude that the hearing officer was within his fact finding and decision-making authority in upholding the designated doctor's IR for the compensable right lower extremity injury of _____. No basis is indicated for rejecting Dr. G's rating. Texas Workers' Compensation Commission Appeal No. 94210, decided March 31, 1994. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge