APPEAL NO. 992429

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 21, 1999, a hearing was held. He (hearing officer) determined that appellant's (claimant) impairment rating (IR) was five percent as set forth by the designated doctor. Claimant asserts that the great weight of the medical evidence is contrary to the designated doctor's opinion, citing the designated doctor's refusal to provide an IR for pain in the median nerve that interferes with activity. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on September 14, 1994. Claimant did not testify but did answer a question of the hearing officer about whether she still worked for employer by replying, "yes." She then was asked a series of questions to which she stated that her "lost time" was "six weeks or something for my surgeries" (for carpal tunnel syndrome (CTS)-type problems). She also said that she does a "tremendous" amount of typing, adding, "I'm the lead HCA3 and I work all positions there, whatever is necessary on a day-to-day basis." The parties agreed that her statements would be considered to have been under oath.

An IR and disability are not determined by the same criteria. But part of the equation in the issue of IR in this case consists of loss of function of an upper extremity. *See* pages 36; 37; and Table 10, page 40; all in Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

Claimant was provided a 27% IR by a referral doctor, Dr. W, in July 1998. This included range of motion (ROM) deficits and "median nerve irritation"; no strength deficit was found. Dr. W said, "[b]oth median nerves have pain which interferes with activity." He then said that each upper extremity is impaired by 12%. (12% equates to seven percent whole body IR, per table 3, page 20, AMA Guides.) Dr. W opined that if claimant stopped smoking and did aerobic exercise she could "reduce pain problems." (He had noted claimant to be 5'2" and to weigh 190 pounds.)

A designated doctor, Dr. T, was appointed and examined claimant on September 28, 1998. He determined that she has an IR of five percent, comprised of ROM limitations. He stated that claimant showed "no objective sensory deficit and no objective motor deficit of the upper extremity." In his more detailed comments, Dr. T noted EMG and NCV studies in June 1997 which stated there was left median neuropathy and possible mild right median neuropathy; he also noted claimant's surgery for left CTS in August 1997 and right CTS in October 1997, observing "excellent results" with some "soreness." He commented in his physical examination that motor strength testing showed "good strength 5/5 in all major

muscle groups tested." He also said, "[s]ensory examination showed no dermatomal deficits noted."

Claimant then sought an IR from Dr. C. He evaluated her on March 9, 1999. His report, however, notes surgery for CTS in 1993 and bilateral thoracic outlet release in 1994, but does not mention the surgeries in 1997. (The record of hearing includes operative notes from August 1997 and October 1997.) He found an IR of 18%. He found both sensory and strength deficits on the right but neither on the left. (As carrier pointed out, Dr. W and Dr. C agree that there is a median nerve (sensory) deficit on the right.) They agree that there is no strength loss on the left; they disagree as to strength loss on the right; and they disagree as to sensory loss on the left.

Dr. C testified that he was critical of Dr. T's failure to explain why he did not assign any IR for strength or sensory loss of the right upper extremity. Dr. C did agree that he "will categorize" claimant's injury as "a peripheral nerve lesion" from the "standpoint of the distal median nerve." He also agreed with a statement on page 36 of the AMA Guides, which says that if impairment results from a peripheral nerve lesion, the "evaluator should not apply the impairment values from both Sections 3.1A through 3.1G (ROM) and this section (tables for strength and sensory loss) because this would result in a duplication . . . "

In addition to the quote above from page 36, that page also says that to evaluate peripheral nerve lesions "it is necessary to determine the extent of loss of function due to (a) sensory deficit, pain or discomfort . . . " Page 37 also states that "major causalgia (burning pain) that persists . . . can result in loss of function of the affected extremity" and that an evaluation of pain associated with peripheral nerve disorders "should consider (a) how the pain interferes with the individual's performance of the activities of daily living; (b) to what extent the pain follows the defined anatomical pathways of the root . . . ; and (c) to what extent the description of the pain indicates that it is caused by a peripheral nerve abnormality." Table 10 on page 40 relates to upper extremities and addresses "impairment . . . due to pain, discomfort, or loss of sensation." It provides a "grading scheme" in which every level of grading of more than zero percent includes some "decreased sensation"; some levels also have pain as a factor and some do not.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He could compare the IR's of Dr. W and Dr. C and conclude that there was some agreement between Dr. C, Dr. W and Dr. T. He could consider comments in Texas Workers' Compensation Commission Appeal No. 93756, decided October 6, 1993, cited by carrier, in which "loss of function" was stressed in a similar question of IR for the upper extremity. He could also consider the opinion of carrier's peer review doctor, Dr. G, who said in October 1998 that Dr. W did not show sensory loss and added, "[p]ain alone is not ratable." As claimant stated, she is working and has been working except for periods associated with her surgery. We do not read the AMA Guides as allowing IR for "pain alone" as suggested by the appeal. Dr. T commented that he observed "no objective sensory deficit" and also said that the "sensory examination showed no dermatomal deficits noted." The great weight and preponderance of the evidence does not show that the

hearing officer erred in finding that the great weight of credible medical evidence is not contrary to the findings of the designated doctor.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge