

APPEAL NO. 992446

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 21, 1999, a contested case hearing (CCH) was held. In her (the hearing officer) first decision and order, she determined, among other things, that the impairment rating (IR) of the respondent (claimant) is 20%. Appellant (carrier) appealed only the determination regarding the IR. The Appeals Panel reversed the hearing officer's decision and remanded the case to the hearing officer for clarification from the designated doctor regarding his 20% IR. Texas Workers' Compensation Commission Appeal No. 990363, decided April 8, 1999. The hearing officer sought clarification from the designated doctor and his response is in evidence. The hearing officer held a CCH on remand and, in a decision signed thereafter, again accorded presumptive weight to the designated doctor's report. Carrier again appealed, contending that the designated doctor, Dr. B, did not properly apply the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) when assessing neurological impairment. Claimant did not respond on appeal.

DECISION

We affirm.

In its appeal after remand, carrier contends the hearing officer erred in determining that claimant's IR is 20%. Carrier complains that the designated doctor improperly rated the neurological impairment regarding claimant's back injury. Carrier asserts that electro-diagnostic studies do not support any weakness in the various nerves rated by the designated doctor and states that a herniation at L5-S1 cannot affect those nerves.

The background facts, applicable law, and our standard of review are stated in our prior decision and will not be repeated here. The 20% IR found by the hearing officer included seven percent impairment for specific disorders of the lumbar spine and 14% neurological impairment found by the designated doctor. Carrier did not dispute the seven percent impairment for specific disorders. Carrier disputed only the 14% neurological/muscle strength impairment found by the designated doctor.

The hearing officer sought clarification from the designated doctor regarding his use of the AMA Guides. In a June 24, 1999, response to the hearing officer's question, the designated doctor stated that: (1) he found weakness in claimant's buttocks; (2) deformities of "cervical vertebrae" may cause nerve root pressure and "peripheral nerve symptoms"; (3) claimant had compression of the "S1 and S2 nerve" roots and an additional lumbar segment; (4) it is suggested that trigger points cause nerve root pressure that cannot be seen on an MRI; (5) claimant had "multi-level lumbar nerve root compression," and not just S1 nerve root compression; (6) values for impairment of a specific spinal nerve root that are not mentioned in Table 45 should be determined by taking into consideration the values

that are suggested for a nerve having fibers from the specific nerve root and reference should be made to “the named spinal nerves” in the AMA Guides; and (7) “the most accurate manner” of determining impairment in the ranges given by Table 45 is to “construct backwards by seeing which named spinal nerves are impaired” and to “assign impairment to the individual spinal nerve roots.” The hearing officer determined that the great weight of the medical evidence is not contrary to the designated doctor’s report, as it relates to claimant’s lumbar impairment. We note that a mere difference in medical opinion is not enough to overcome the presumption in favor of the designated doctor. Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996. We have reviewed the record and we conclude that the hearing officer’s IR determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer’s decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge