

APPEAL NO. 992955

A contested case hearing was originally held on August 16, 1999, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), with hearing officer presiding as hearing officer. In Texas Workers' Compensation Commission Appeal No. 992046, decided November 4, 1999, the Appeals Panel reversed the decision of the hearing officer that the respondent's (claimant) impairment rating (IR) is 16% as certified by Dr. E, the designated doctor, in a report dated September 17, 1998, and amended on June 3, 1999; rendered a decision that the report of Dr. E dated June 3, 1999, in which he assigned a 20% IR is entitled to presumptive weight; and remanded for the hearing officer to determine whether the great weight of the other medical evidence is contrary to that amended report and to assign an IR. The hearing officer held another hearing on December 13, 1999; permitted the parties to present arguments; and rendered another decision the next day in which he determined that the great weight of the other medical evidence is not contrary to the June 3, 1999, report of Dr. E and that the claimant's IR is 20%. The appellant (carrier) requested review. It argued that presumptive weight should be given to the report of Dr. E dated September 17, 1998; that the great weight of the other medical evidence is contrary to the June 3, 1999, report of Dr. E; and that the claimant's IR is 16%. The carrier requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's IR is 16%. A response from the claimant has not been received.

DECISION

We affirm.

The facts are set forth in Appeal No. 992046, *supra*. Briefly, the designated doctor assigned three IRs. In the second report, the designated doctor did not assign an impairment for loss of lumbar range of motion (ROM) because of the recent surgery. He assigned a 16% IR that included zero percent for mental behavioral disorders. About nine months later, the designated doctor assigned a 20% IR. He invalidated ROM because of the straight leg raise test and assigned five percent for mental behavioral disorders. The carrier contended that it was appropriate for the designated doctor to consider lumbar ROM but inappropriate for him to reevaluate mental behavioral disorders. The Appeals Panel did not agree; summarized the facts and stated the holding in Texas Workers' Compensation Commission Appeal No. 990552, decided April 29, 1999; said that a hearing officer may not pick and choose parts of a designated doctor's report; and rendered the decision set forth earlier in this decision. On remand, the hearing officer rendered a decision that the great weight of the other evidence is not contrary to the third report of the designated doctor and that the claimant's IR is 20%. In its appeal, the carrier did not state what evidence it thought was contrary to the third report of the designated doctor, but again contended that it was not proper to include the five percent impairment for mental behavioral disorders. We do not retreat from our decision in Appeal No. 992046, *supra*. The evidence is sufficient to support the decision of the hearing officer.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge