APPEAL NO. 000182

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 January 7, 2000. The only issue at the CCH was the correct impairment rating (IR) of the appellant (claimant). The hearing officer determined that the claimant had a five percent IR, as assessed by the designated doctor, Dr. C, D.C. The claimant appealed, contending that his IR should be 17% as assessed by his treating doctor, Dr. P, D.C. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Claimant testified how he sustained a neck and low back injury on _____, attempting to lift a sliding door on a delivery truck. Claimant began treating with Dr. P on May 21, 1998, and Dr. P has been the treating doctor, treating claimant conservatively. Claimant has not had any surgery. The parties stipulated that claimant reached maximum medical improvement (MMI) on February 10, 1999.

On February 10, 1999, shortly before claimant moved out of state, Dr. P certified MMI on that date and assessed a 17% IR based on a seven percent lumbar impairment from Section II C of Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), eight percent impairment for various aspects of lumbar range of motion (ROM) (combined for 14% lumbar impairment), a four percent cervical impairment from Section II B of Table 49 and a one percent impairment for sensory deficit, combined to be a 17% whole body IR. The hearing officer, in his Statement of the Evidence, noted that Dr. P "failed to include the 5% abnormal [ROM] for the neck."

This IR was apparently disputed and Dr. C, also a chiropractor, was appointed as the designated doctor. On a Report of Medical Evaluation (TWCC-69) and narrative, both dated March 22, 1999, Dr. C certified MMI on February 10, 1999, and assessed a five percent IR based on a specific disorder of the spine, Section II B of Table 49 of the AMA Guides. Dr. C's report indicates claimant "denied any complaints of upper or lower extremity radicular symptoms," assessed a zero percent impairment for any cervical specific disorder commenting that claimant did "not meet the required criteria, namely 'recurrent muscle spasm or rigidity' needed to assign an impairment," found no cervical loss of ROM and invalidated lumbar flexion and extension loss of ROM based on the straight leg raise. No impairment was noted on motor and sensory testing. This report was apparently given to Dr. P, who apparently (no reports are in evidence) disagreed with Dr. C's IR.

Based on Dr. P's disagreement, the Texas Workers' Compensation Commission (Commission), by letter dated July 5, 1999, requested clarification from Dr. C, sending

Dr. C, Dr. P's letter (not in evidence). Dr. C replied by letter dated July 30, 1999, assuring that he had used the AMA Guides, that he found no evidence of muscle spasms or rigidity of the cervical spine, that the radiologist's interpretation of the MRIs warranted only a five percent lumbar impairment from Section II B instead of seven percent from Section II C of Table 49, and that he found no permanent neurological deficits. The Commission again requested further comment in a letter dated September 23, 1999, which forwarded additional diagnostic radiological reports. Dr. C replied by letter dated October 5, 1999, stating:

> As indicated in my recent letter to [the Commission] on 7-30-99, my evaluation of [claimant's] cervical condition revealed no evidence of muscle spasms or rigidity in the area of the cervical spine. The absence of palpable muscle spasms combined with normal [ROM] measurements, in my opinion, constituted "no residuals", therefore, [claimant] was assigned the appropriate impairment from Table 49, II A "Unoperated, with no residuals", 0%. As for any other category of impairment for the cervical spine, I can only reiterate my previous statements. During my examination of [claimant's] cervical condition he completely denied any complaints of radicular symptoms and the pain drawing completed by [claimant] just prior to the examination revealed no evidence of radicular complaints for the upper extremities. Therefore, I found no justification for the assignment of a permanent impairment for the cervical spine.
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> As for the lumbar spine impairment, I continue to stand by my assigned 5% whole body impairment for the disorders category. Again, as indicated in my letter to [the Commission] on 7-30-99, this opinion was not solely based on my own x-ray impressions of the plain film x-rays but also the impressions of [Dr. T], D.C. and [Dr. F], M.D. It is simply not possible to categorize the degenerative changes noted in [claimant's] lumbar spine as anything but minimal, therefore, 5% whole person impairment for the disorders category is appropriate.

Claimant at the CCH, and on appeal, continued to maintain that Dr. P's IR was more accurate than Dr. C's, that Dr. C should have rated the cervical spine, that Dr. C was not "professional" and basically, that we should find that his IR is 17% as assessed by Dr. P. Carrier's reply is that the difference between the ratings is a professional disagreement whether the cervical spine should be rated at all and whether the specific lumbar disorder is more appropriately rated from Section II B or II C of Table 49.

Section 408.125(e) provides with respect to the determination of an injured employee's IR that the report of the designated doctor is entitled to presumptive weight and that the Commission shall adopt such report unless it is contrary to the great weight of the other medical evidence. The Appeals Panel has long since stated that it is not just equally balancing evidence or even a preponderance of the evidence that can outweigh the designated doctor's report but rather a "great weight" of other medical evidence is required

to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Further, we have emphasized the unique position that a designated doctor's report occupies under the 1989 Act in resolving disputes concerning MMI dates and IR issues and that no other doctor's report, including that of a treating doctor, is accorded this special, presumptive status. Appeal No. 92412. We have also said that the report of the designated doctor should not be rejected "absent a substantial basis" for doing so. Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge