

APPEAL NO. 000232

On January 10, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issue by deciding that respondent (claimant) has an 18% impairment rating (IR) as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). Appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. No response was received from claimant.

DECISION

Affirmed.

Section 408.125(e) provides that, if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors.

The parties stipulated that claimant sustained a compensable injury on _____; that he reached maximum medical improvement (MMI) on June 24, 1999; and that the Commission selected Dr. H as the designated doctor. Claimant injured his left knee at work on _____, when he slipped and fell, striking his left knee on a rod. In September 1998, Dr. H reported that claimant was not at MMI, that Dr. K had read the MRI and noted that the anterior cruciate was not identified, and that claimant may be a candidate for anterior cruciate replacement. Dr. P reported in December 1998 that an MRI of claimant's left knee done in July 1998 showed, among other things, an apparent tear of the anterior cruciate ligament. In January 1999, Dr. A, claimant's treating doctor, diagnosed claimant as having, among other conditions, an anterior cruciate ligament tear. On February 1, 1999, Dr. A performed an arthroscopic procedure on claimant's left knee and gave a preoperative and postoperative diagnosis of medial and lateral meniscal tears with multiple osteophytes and chondromalacia of the femoral groove. Subsequently, Dr. A diagnosed claimant as having chondromalacia, chondrodystrophy, a lateral meniscus tear, and a medial meniscus tear. In a Report of Medical Evaluation (TWCC-69) dated July 6, 1999, Dr. A certified that claimant reached MMI on June 24, 1999, with a nine percent IR. It does not appear that Dr. A assigned any impairment for an anterior cruciate ligament tear.

Dr. H reexamined claimant on August 19, 1999, and in a TWCC-69 dated August 25, 1999, certified that claimant reached MMI on June 24, 1999, with an 18% IR for impairment of the left knee. Dr. H stated an impression of post-traumatic osteoarthritis, torn medial meniscus, torn lateral meniscus, and anterior cruciate tear. Dr. A assigned impairment for, among other things, an anterior cruciate lesion. Dr. HU reviewed Dr. H's TWCC-69 of

August 25, 1999, at carrier's request and reported that the impairment Dr. H assigned for the anterior cruciate lesion should be disallowed, because, although claimant has left knee instability, in Dr. HU's opinion, there is no objective evidence of an anterior cruciate tear by MRI or arthroscopy. Dr. HU opined that claimant has a 14% IR. Dr. A performed a second arthroscopic procedure on claimant's left knee on December 27, 1999, and he stated a preoperative and postoperative diagnosis of medial meniscus tear and arthrofibrosis.

Carrier contends on appeal, as it did at the CCH, that the 18% IR assigned by Dr. H is contrary to the great weight of the other medical evidence because it contends that there is no evidence of an anterior cruciate ligament tear. The hearing officer considered and rejected carrier's contention and found that the great weight of the other medical evidence is not contrary to the determination of Dr. H and that Dr. H's report is entitled to presumptive weight. The hearing officer concluded that claimant's IR is 18%. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge