

APPEAL NO. 000421

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 3, 2000. With regard to the sole issue before her, she determined that the respondent's (claimant) impairment rating (IR) is 26% per the designated doctor's report. The appellant (carrier) appeals, urging that the great weight of the other medical evidence is contrary to the report of the designated doctor. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable neck and upper extremities injury on _____, and reached statutory maximum medical improvement on December 24, 1998. The claimant testified that she sustained an injury as a result of filing folders in a tightly packed file cabinet. The claimant sought medical treatment with Dr. R, who diagnosed the claimant with cervical radiculoneuropathy complicated by C5-6 disc herniation and bilateral carpal tunnel. On December 14, 1998, Dr. R assigned the claimant a 22% IR. This IR included a 12% whole person impairment for both upper extremities, and a total spine impairment of 12% comprised of six percent from 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) and six percent for cervical range of motion (ROM) deficits. On February 16, 1999, the claimant was examined Dr. G, the Texas Workers' Compensation Commission (Commission)-selected designated doctor. Dr. G diagnosed the claimant with brachial neuritis, carpal tunnel syndrome, and sprain/ strain of the neck. Dr. G assigned the claimant a 26% IR which included a total spine impairment of 18% based on ROM deficits, and a 10% whole person impairment for both upper extremities.

The carrier had Dr. G's report reviewed by Dr. C. On March 6, 1999, Dr. C issued a report disagreeing with Dr. G's assessment. Dr. C testified that the 18% impairment assigned for cervical ROM deficits is virtually impossible given that the claimant has not had surgery and has no significant pathology. Dr. C states that a person with an 18% ROM deficit would not be able to move their neck enough to drive a car, and it would take a total cervical fusion of all seven vertebrae to result in a 14% IR. Dr. C also testified that Dr. G's narrative report contains a procedural error because he combined each of the wrists together prior to converting to whole person, but he acknowledged that Dr. G's computerized program indicated that the calculations were done correctly and yielded the same result. Dr. C opined that the claimant's cervical impairment should be in the range of four to ten percent. After Dr. G reviewed Dr. C's report, Dr. G reiterated his original assessment, relying on his examination of the claimant and the medical records.

The carrier had the claimant evaluated by Dr. N on September 14, 1999. Dr. N assessed a zero percent IR and states "[a]lthough she would have qualified for an 18%

whole person impairment on the basis of the [ROM] presented, it is my opinion that due to submaximal effort, which I am unable to measure, she would qualify for 0% whole person impairment on the basis of any [ROM] disorder.”

Section 408.125(e) provides that the report of the designated doctor selected by the Commission is entitled to presumptive weight and that the Commission shall base the IR on such report unless it is contrary to the great weight of the other medical evidence. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. The carrier asserts that the reports and testimony of Dr. C constitute the great weight of the other medical evidence.

The hearing officer determined that the great weight of the medical evidence is not contrary to the designated doctor's report. In so determining, she states that Dr. C and Dr. N may disagree with Dr. G's assessment, but Dr. G addressed Dr. C's concerns. 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. The report of the designated doctor indicates that he used the proper AMA Guides and properly applied them to the compensable injury. While the hearing officer did not make a specific finding that the designated doctor's report was given presumptive weight, we can infer that the hearing officer found that the report of Dr. G is entitled to presumptive weight. The determination of the hearing officer that the claimant's IR is 26% is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (Tex. 1951).

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge