

APPEAL NO. 000465

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 February 10, 2000. With regard to the only issue before her, the hearing officer determined that the appellant's (claimant) impairment rating (IR) was eight percent as assessed by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appeals, contending that his medical evidence proved by a preponderance of the evidence that his IR is higher than eight percent. There is no response from the respondent (carrier).

DECISION

Affirmed.

Claimant testified how on _____, he was injured when the wind blew open a door, throwing claimant against a trailer. The parties stipulated that claimant sustained a compensable injury on that date; that claimant reached maximum medical improvement (MMI) on January 29, 1999; that Dr. A is the Commission-selected designated doctor; that Dr. N is claimant's initial treating doctor and assigned a nine percent IR; that Dr. H is claimant's current treating doctor and assigned a 10% IR; that Dr. X is the carrier-required medical examination (RME) doctor and assigned an eight percent IR; and that Dr. A assigned an eight percent IR.

Although the parties stipulated to Dr. N's nine percent IR and Dr. H's 10% IR, we find no reports assessing those IRs in the file; therefore, we are unable to ascertain the basis for those ratings. In a Report of Medical Evaluation (TWCC-69) and narrative both dated February 9, 1999, Dr. X, carrier's RME doctor, certified MMI and assessed an eight percent IR based on:

(20%) for inconstant crepitation, which is (60%) of his shoulder, and yields a (12%) upper extremity. A (12%) upper extremity is a (7%) whole person impairment. Combining (7%) and (1) [for right shoulder loss of range of motion (ROM)] is a total impairment of (8%) based on Guides to the Evaluation of Permanent Impairment, Third Edition, Second Printing, [dated February 1989, published by the] American Medical Association [AMA Guides].

Dr. X noted mild degenerative changes at L4-5 and moderate degenerative changes at L5-S1, but assessed no impairment for either a specific lumbar disorder or lumbar ROM, finding only a resolved lumbar strain. Although Dr. X references some reports showing a cervical strain, Dr. X does not address a cervical impairment.

Dr. A, the designated doctor, in a TWCC-69 and narrative both dated May 17, 1999, certified MMI and assessed an eight percent IR based on two percent whole person impairment for "permanent ligament injuries of the [right shoulder] joint and [10% right upper extremity impairment or] 6% whole person impairment for ROM deficits of the right shoulder." Dr. A specifically assessed zero percent impairment for lumbar and cervical spine complaints. Claimant raised several concerns with Dr. A's report and the Commission, by letter dated October 28, 1999, asks Dr. A for clarification whether an IR "due to a Specific Disorder of the Spine from Table 49 [of the AMA Guides] is warranted." Dr. A replied by letter dated November 10, 1999, that claimant's cervical complaints were minimal and that Dr. A's clinical impression was that "the patient did not have enough complaints with his low back and in examination Waddell [sic] Signs was positive." Dr. A felt that an impairment due to a specific disorder of the lumbar spine "was not warranted." Claimant at the CCH argued that Dr. A's worksheet on ROM measurements showed validated loss of cervical and lumbar ROM. (Dr. A apparently did not find a ratable cervical or lumbar injury.) We have held that the decision whether or not to include a rating for a specific disorder under Table 49 presents a medical difference of opinion. See Texas Workers' Compensation Commission Appeal No. 951921, decided December 11, 1995.

With respect to an IR, Section 408.125(e) provides 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 occupies under the 1989 Act in resolving disputes concerning 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:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge