

APPEAL NO. 000622

On March 13, 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=s (claimant) impairment rating (IR) is 30% as certified by the designated doctor chosen by the Texas Workers= Compensation Commission (Commission). Appellant (self-insured) requests that the hearing officer=s decision be reversed and that a decision be rendered that claimant has a three percent IR or, in the alternative, that the case be remanded to the hearing officer. No response was received from claimant.

DECISION

Affirmed.

Claimant testified that he has worked for many years as a vehicle assembler for self-insured and that he sustained a repetitive trauma injury to his low back, neck, elbows, and hands. The parties stipulated that on _____, claimant sustained a compensable injury. Since claimant has a repetitive trauma injury, which is an occupational disease, the _____, date of injury is the date claimant knew or should have known that the disease may be related to the employment. Section 408.007. The _____, date of injury is not necessarily the date claimant first had symptoms related to his repetitive trauma injury. For example, self-insured=s nurse recorded on _____, that claimant reported to her that he has had lumbar pain for six months, bilateral elbow/hand pain for ten months, and neck pain for several months. Claimant has had a lumbar MRI, cervical MRI, and EMG studies of his upper and lower extremities. The EMG report of June 2, 1999, notes a history of low back pain for the last year. Dr. A reported in May 1999 that claimant stated that he has had pain for about six months and that it became severe on _____.

Dr. S examined claimant at self-insured=s request on July 6, 1999, and certified in a Report of Medical Evaluation (TWCC-69) that claimant reached maximum medical improvement (MMI) on July 6, 1999, with a three percent IR. Dr. SW, claimant=s treating doctor, certified in a TWCC-69 that claimant reached MMI on August 16, 1999, with a 13% IR. Dr. C, the designated doctor chosen by the Commission, examined claimant on August 17, 1999, and certified in a TWCC-69 that claimant reached MMI on August 16, 1999, with a 30% IR. The parties stipulated that claimant reached MMI on August 16, 1999. The 30% IR assigned by Dr. C was for impairment of claimant=s cervical spine, lumbar spine, and upper extremities. The impairment for the lumbar spine and cervical spine included impairment for specific disorders and for loss of range of motion. The Commission sent Dr. S=s letter questioning the accuracy of the IR assigned by Dr. C to Dr. C for comment and Dr. C responded to Dr. S=s criticisms in a two-page letter and did not change the IR. Among other things, Dr. C noted that while the reported date of injury of _____, is less than six months from the date of MMI, medical records from Drs. SW, C, and A documented that

claimant had been having neck and low back pains, as well as wrist and hand pains, for several months, which gradually got worse until claimant reported it on _____, and then claimant saw Dr. SW. DA also critiqued the 30% IR assigned by Dr. C. Dr. SW wrote in January 2000 that he is in total agreement with the 30% IR assigned by Dr. C and that Dr. C's IR should stand because it is the most thorough and accurate rating and is inclusive of all of claimant's compensable bodily injuries.

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 hearing officer found that the great weight of the other medical evidence is not contrary to the report of Dr. C that claimant's IR is 30% and concluded that claimant's IR is 30% as reported by Dr. C. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Dorian E. Ramirez
Appeals Judge