APPEAL NO. 000716

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 originally held on July 7, 1999. The Appeals Panel, in Texas Workers= Compensation Commission Appeal No. 991672, decided September 20, 1999, remanded the case to decide the appellant=s (claimant) impairment rating (IR) after examination by a second designated doctor. No further hearing was necessary and none was held. The hearing officer determined that the claimant=s IR is 13% in accordance with the report of the designated doctor, which is not against the great weight of the contrary medical evidence.

The claimant appealed and asserts confusion with this and other decisions. It is apparent that the sincere conviction of the claimant is that he merits a high IR. He interprets a statement of the designated doctor as indicating that the doctor is simply speculating or guessing about the validity of range of motion (ROM). He argues that his reflex sympathetic dystrophy (RSD) should be rated. The respondent (carrier) responded that the reason for remanding the case was to have claimant tested for ROM. As this happened, and the second designated doctor still found it was invalid, there is no further basis for relief for ROM. The carrier asserts that the decision should be upheld.

DECISION

The decision is affirmed.

The facts have already been recited in our earlier decision in Appeal No. 991672, *supra,* and will not be repeated here. However, we will add that the mechanism of claimant's back injury was that, while working as a plumber, he slipped on a board in a muddy trench, then, an hour later, had a pipe give way while he was pulling it and he jerked. Also, claimant was 37 years old at the time of his examination by the second designated doctor. Because claimant is under the impression that the hearing officer "took out" previous exhibits, we stress that all evidence from the previous CCH has been considered along with the new designated doctor's report, and was also part of the record that the hearing officer considered.

Claimant was examined on January 21, 2000, by Dr. K. Dr. K has written an extensive seven-page single-spaced report. It is evident that he examined claimant and performed ROM testing. He still found ROM invalidated by straight leg raising (SLR). Because claimant indicated that he cannot understand what is happening to him or what these measurements mean, we will use the example of SLR to explain the problem.

Dr. K tested SLR when claimant was laying down on his back, and when he was seated. Where there is a real organic reason for limited motion, the angles of raising the leg will vary little. But where the person being examined is limiting their movements consciously, these angles will vary greatly. Dr. K found that when claimant was on his back, he could barely raise his leg (five degrees, with marked pain behavior). However, when he was seated, and

distracted by Dr. K, he could raise his right leg to 90E and his left leg to 70E (without pain behavior). If the claimant's inability to move resulted from physical problems in his back, he should not have been able to move his legs to the degree he did while seated. Dr. K did note that when the claimant was told that SLR was important to evaluate his ROM, he became more cooperative and then allowed raising to a greater amount (50E and 38E, right and leg maximum degrees).

Dr. K ended up using Table 50 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) in place of ROM (most of which was invalidated anyhow) and he noted there was radiographic evidence of ankylosis. Claimant's overall IR was 13%. Of this, claimant's lumbar spine alone (leaving aside the effect on his ability to move) merited 10%.

While RSD itself does not have an IR in the AMA Guides, it is possible to rate some of the sensory and strength effects of RSD by using other portions of the AMA Guides. However, the injured worker must demonstrate a sensory or strength loss. Muscle strength loss caused by nerve problems in the back is objectively indicated by a loss of muscle tone or size (atrophy), among other things. Dr. K noted that claimant had some left calf atrophy, although not a great deal compared to the right calf. There was some loss of sensation in the S1 and L5 areas of the lower left extremity. However, muscle strength was normal on testing. Dr. K also noted that he saw no signs of an active RSD or physical impairments resulting from RSD. We note that Dr. K, when he pressed on claimant's lumbar spine, also found no tenderness or muscle spasms.

As we read Dr. K's report, there is no guesswork on his part. The phrase "I do not think" is a statement of his position, not an indication that he is not sure. He has indicated, as have other physicians who have examined the claimant, that the claimant magnifies his symptoms beyond what the underlying physical damage would seem to account for. This is another way of stating that within the doctor's experience dealing with other injured persons, the claimant acts more hurt than most people with similar injuries. While this does not necessarily mean that a person is "faking," symptom magnification can present a problem with the natural recovery from an accident and resumption of life's normal activities.

The legislature has stated that the designated doctor's opinion will have "presumptive weight." This means that it will be taken as the correct IR unless it is clear, from looking at all the other medical evidence, that the designated doctor is virtually alone in his opinion. The fact that the treating doctor, or a carrier doctor, may disagree with the designated doctor does not constitute "a great weight of contrary medical evidence" that will allow the hearing officer to set aside the designated doctor's opinion. The claimant has now been examined by two designated doctors, and he has had his ROM evaluated. There is no basis to send claimant to another doctor, especially when it is clear that he believes that an IR short of what the treating doctor gave him will be inadequate.

We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge