APPEAL NO. 000742

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 March 7, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on December 15, 1998, with a 12% impairment rating (IR) based upon the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals, stating that the designated doctor's IR is incorrect and arguing that the 25% IR of his treating doctor was the correct IR. The respondent (self-insured) replies that the designated doctor's rating was entitled to presumptive weight; that another doctor also rated the claimant IR at 12%; and that the treating doctor's rating does not comply with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

It was undisputed that the claimant suffered a compensable injury on _____, while working for the self-insured. The claimant suffered an injury to her right knee when she was struck by a chair and fell. The claimant underwent arthroscopic surgery to repair her medial and lateral meniscus. On a Report of Medical Evaluation (TWCC-69) dated December 15, 1998, Dr. P, the self-insured's medical examination order doctor, certified that the claimant attained MMI on December 15, 1998, with a 12% IR. Dr. Y, who the parties stipulated was the designated doctor selected by the Commission, certified on a TWCC-69 dated March 23, 1999, that the claimant attained MMI on December 15, 1998, with a 12% IR. Dr. B, the claimant's treating doctor, wrote a letter criticizing Dr. Y's IR assessment as not rating the claimant's entire injury and not properly applying the AMA Guides. The Commission sent Dr. B's letter to Dr. Y who responded in a letter dated October 4, 1999, in which he stated that he disagreed with Dr. B and that his opinion remained that the claimant's IR was 12%. Dr. B certified on a TWCC-69 dated November 26, 1999, that the claimant attained MMI on December 15, 1998, with a 25% IR.

Section 408.125(e) provides:

> 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. 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.

We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. 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 designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard, we find that the hearing officer did not err in giving presumptive weight to the report of the designated doctor and in not finding the great weight of the other medical evidence contrary to his report. While Dr. Y and Dr. B disagree about how to apply the AMA Guides in assessing the claimant's IR, we find their disagreement a mere difference of medical opinion.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge