APPEAL NO. 000901

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 2, 2000. The hearing officer determined that the respondent's (claimant herein) correct impairment rating (IR) is 24% and that the Texas Workers' Compensation Commission (Commission) abused its discretion in designating a third designated doctor. The appellant (carrier herein) appeals, arguing that the hearing officer erred in finding the great weight of the other medical evidence was contrary to the zero percent IR certified by the second designated doctor. The claimant responds that the hearing officer's findings and decision were supported by sufficient evidence.

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.

The hearing officer summarized the evidence and the rationale for his decision as follows in the portion of his decision "Statement of the Evidence," which states, in relevant part, as follows:

> The salient facts in this case were largely undisputed and established that the claimant sustained a compensable one-time inhalation injury on _____. On that date he was exposed to chemical fumes while cleaning a machine while within the course and scope of his employment. Complicating the analysis of the issues presented is the fact that prior to the injury, the claimant was a diabetic. The claimant successfully urged in prior proceedings before the Commission that his diabetes was aggravated by the necessary and proper medical treatment that he received as a result of his compensable injury. Those proceedings culminated in Appeals Panel Decision Number 951290 [Texas Workers' Compensation Commission Appeal No. 951290, decided September 18, 1995]. Complicating matters further is that the claimant also had pre-existing pulmonary disease, namely hypertension. The claimant successfully pursued the claim that his hypertension had also been aggravated which lead to chronic pedal edema as well as a rise in his tachycardia. The result of the previous proceedings is that final decisions have been rendered specifying that the claimant's compensable injury included his diabetes as well as his hypertension, tachycardia, and pedal edema.
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> The claimant was initially determined to have achieved maximum medical improvement [MMI] on July 1, 1995 and was assigned an [IR] of zero. Following a dispute, the claimant was eventually sent by the Commission to a designated doctor. The Commission selected [Dr. P]. [Dr. P] examined the claimant and the medical records which were made

available to him and issued a report dated May 5, 1997. In that report, [Dr. P] agreed that the claimant was at his [MMI] on July 1, 1995 and that the correct [IR] was zero. [Dr. P] noted that the claimant's cough and nosebleeds (the initial symptoms of his injury) had resolved. He wrote that the claimant's deterioration of respiratory function and the worsening of his diabetes was more likely the progression of the underlying diseases and was not the result of ongoing residual impairment from the incident itself.

After that examination, the benefit review officer [BRO], [Ms. M], wrote to [Dr. P] and explained that the illnesses and conditions mentioned above had been determined to be causally related to the claimant's injury. [Ms. M] arranged for a re-examination and requested that [Dr. P] address those illnesses and conditions in his next report. The evidence established that [Dr. P] re-examined the claimant and submitted another report dated April 12, 1999. [Dr. P's] report indicated that he was aware that the Commission had determined that [the claimant's] medical problems had been accepted as related to his exposure. [Dr. P] goes on to state that he found no evidence to support the proposition that [the claimant's] medical condition was directly or solely related to the compensable event, and noted that [the claimant] had all of these medical diagnoses prior to his exposure. [Dr. P] concludes that while he accepts the Appeals Panels' conclusions, he does not believe that the "conditions" were anything more than a mild exacerbation of a pre-existing condition. Accordingly, [Dr. P's] opinion remained that the correct [IR] was zero. In reaction to this response, the [BRO] appointed another designated doctor. Although her reasons for doing so were not in evidence, it is apparent from the record that she concluded that [Dr. P] had either refused to comply with AMA Guides [Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association] or her directives by his actions in rating the claimant's compensable conditions with a zero. [Ms. M] then appointed [Dr. K] to serve as the designated doctor. [Dr. K] examined the claimant and submitted a rating inclusive of all the claimant's compensable conditions. That rating was 24 percent. The carrier objected to the appointment of [Dr. K], and asserts that even if he were properly appointed, presumptive weight should not be attached to his report because in its opinion, the great weight of the other medical evidence is contrary to his report.

* * * *

Following the hearing, I wrote [Dr. P] and provided him with the medical records of [Dr. S], the claimant's doctor before his injury. [Dr. P] was asked to review these record[s] and respond by stating whether those records changed his opinion regarding the claimant's [IR]. Despite numerous follow up telephone calls, [Dr. P] never responded to this request.

> After a thorough review of all of the medical records, I conclude that the great weight of the other medical evidence is contrary to [Dr. P's] report and find that the claimant's correct [IR] is 24%, according to [Dr. K]. [Dr. K] was aware of all of the expert medical opinions which had been generated in this case. His report provide[s] a logical and coherent analysis, and he was aided by a neutral specialist, [Dr. F], in making his assessment. [Dr. K] notes that following the claimant's injury, his level of insulin usage increased, he requires constant use of inhalers which had been required only infrequently before the injury, and that his use of Diabeta had increased four times since the injury. [Dr. P] indicated that factors such as this could have changed his mind. [Dr. P] sought no additional expert guidance in rendering his assessment, as was done by [Dr. K] in recruiting [Dr. F], a pulmunary [sic] specialist. I find that the combined weight of the other medical opinions outweighs [Dr. P's] assessment.

In addition to the evidence discussed by the hearing officer, we note that the record indicates that the first designated doctor was Dr. T, who certified a 25% IR. Dr. P was appointed when the carrier objected to Dr. T as being not licensed by the same board of examiners as the treating doctor in violation of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b)(4) (Rule 130.6(b)(4)). Also in evidence is a narrative report from Dr. L, a referral physician, assessing the claimant's IR at 15%.

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 contested case 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 do not find error in the hearing officer finding that the great weight of the other medical evidence was contrary to the report of Dr. P. The hearing officer has explained his reasoning for so finding and we do not find that his decision is contrary to the overwhelming evidence. *See* Texas Workers' Compensation Commission Appeal No. 93400, decided July 7, 1993. Nor do we find any merit in the carrier's argument that the hearing officer could not have considered the certification of Dr. K in weighing the medical evidence. Dr. K's report was admitted into evidence and it was the province of the hearing officer to determine what weight to give Dr. K's report.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge