APPEAL NO. 001021

On April 11, 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*. The hearing officer resolved the disputed issue by deciding that appellant (claimant) reached maximum medical improvement (MMI) on May 7, 1998, with an 11% impairment rating (IR) as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. Respondent (self-insured) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on _____, and that the Commission appointed Dr. L, as the designated doctor. Claimant initially treated with Dr. M, whose reports are not in evidence. Claimant was examined by Dr. S at carrier's request on January 15, 1998, and he certified that claimant reached MMI on January 15, 1998, with a zero percent IR. Claimant disputed Dr. S's report and the Commission appointed Dr. L, an orthopedic surgeon, as the designated doctor to determine MMI and IR. Claimant testified that after the Commission appointed Dr. L as the designated doctor, she requested that the Commission approve a change of treating doctor from Dr. M to Dr. Dr. V, and that her request was approved before Dr. L evaluated her on May 7, 1998. According to Dr. L's report of May 7, 1998, claimant's injury occurred when she lost her balance on a stepladder while filing paperwork and caught herself from falling on a rail and that she had neck and low back pain. Claimant said that she has not had surgery for her injury. Dr. L diagnosed a cervical disc herniation and a soft tissue injury of the lumbar spine and noted that cervical and lumbar range of motion (ROM) were normal. Dr. L certified that claimant reached MMI on May 7, 1998, with an 11% IR; six percent for a specific disorder of the cervical spine and five percent for a specific disorder of the lumbar spine. Dr. L noted that claimant has no neurological or strength impairment.

On March 11, 1999, Dr. V certified that claimant reached MMI on March 11, 1999, with a 24% IR; four percent for a specific disorder of the cervical spine, 14% for loss of cervical ROM, five percent for a specific disorder of the lumbar spine, and three percent for loss of lumbar ROM. In April 1999, Dr. V wrote that Dr. L should reevaluate claimant with regard to MMI and IR and the Commission sent Dr. V's letter to Dr. L, who responded that the 11% IR would stand. In November 1999, Dr. V wrote that he had reviewed Dr. L's ROM worksheets and opined that claimant was not at MMI and that Dr. L's IR was perhaps flawed. The Commission apparently sent Dr. V's November 1999 letter to Dr. L and Dr. L responded that the May 7, 1998, MMI date and 11% IR would stand. Dr. V testified at the CCH that he began treating claimant on April 27, 1998, and expressed his disagreement with the MMI date and IR reported by Dr. L.

Section 408.122(c) provides that the report of the designated doctor has presumptive weight, and the Commission shall base its determination of whether the employee has reached MMI on the report unless the great weight of the other medical evidence is to the contrary. 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 Dr. L's report of May 7, 1998, is entitled to presumptive weight and that the great weight of the other medical evidence is not contrary to Dr. L's report of May 7, 1998. The hearing officer concluded that claimant reached MMI on May 7, 1998, with an 11% IR.

Claimant contends that the designated doctor should have been a chiropractor because Dr. V is a chiropractor. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b)(4) (Rule 130.6(b)(4)). We do not find merit in claimant's contention because at the time of Dr. L's appointment, Dr. M, a doctor of medicine, was claimant's treating doctor. *See* Texas Workers' Compensation Commission Appeal No. 000414, decided April 6, 2000. In Texas Workers' Compensation Commission Appeal No. 980719, decided June 5, 1998, the Appeals Panel did not find error in the appointment of a doctor of osteopathy as the designated doctor where the treating doctor was a doctor of medicine and both doctors practiced orthopedics. Claimant contends for the first time on appeal that the signature on Dr. L's report of May 7, 1998, and on Dr. L's letter responses, is not Dr. L's. Since claimant made no such contention at the CCH, we do not address it for the first time on appeal other than to note that Dr. L's May 7, 1998, report and his letter responses are all signed and that no evidence was presented at the CCH to indicate that the signature appearing on those documents is not Dr. L's. Some of the documents attached to claimant's appeal were made a part of the CCH record and some were not. We do not consider the documents that were not made a part of the CCH record. Section 410.203. Claimant asserts that she was told by a Commission employee after the CCH that Dr. L is not on the Commission's designated doctor list. Since claimant made no such assertion at the CCH we do not address it on appeal other than to note that Dr. L's name does appear on the Commission's designated doctor list. We find no reversible error in the hearing officer's exclusion of Dispute Resolution Information System contact data that claimant did not exchange with carrier. 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:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge