APPEAL NO. 001082

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 held on April 14, 2000. The appellant (claimant) and the respondent (carrier) stipulated that on _____, the claimant sustained a compensable injury to his lumbar spine; that the compensable injury includes major depression; that the claimant reached maximum medical improvement on November 18, 1998; that on November 23, 1998, Dr. S, a referral doctor, assigned a 17% impairment rating (IR); that on May 4, 1999, the claimant's treating doctor, Dr. G, assigned a 17% IR; and that on January 19, 1999, Dr. W, the Texas Workers' Compensation Commission-selected designated doctor, assigned a 13% IR. The hearing officer determined that the claimant's compensable injury does not extend to hyperglycemia, high blood pressure, or sexual dysfunction; that the report of Dr. W is entitled to presumptive weight; that the great weight of the other medical evidence is not contrary to the report of Dr. W; and that the claimant's IR is 13%. The claimant appealed; urged that he met his burden of proving that his compensable injury includes hyperglycemia, high blood pressure, and sexual dysfunction; and contended that the evidence is sufficient to overcome the presumptive weight of the report of Dr. W. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be contained in this decision.

We first address the extent-of-injury issue. The claimant testified that he did not have hyperglycemia, high blood pressure, and sexual dysfunction before the compensable injury and that he now has them. In her statement of the evidence, the hearing officer includes quotations from reports of Dr. M, a medical doctor, and Dr. K, a psychiatrist. She also said that connection of the claimed conditions to the compensable injury was beyond common experience; that expert testimony was needed to establish causal relation based on reasonable probability as opposed to possibility, speculation, or guess; and that the substance of expert testimony, rather than the use of particular terms or phrases, was determinative. The hearing officer stated that Dr. M and Dr. K used "may well be," "could be," and "most likely" when relating hyperglycemia, high blood pressure, and sexual dysfunction to the compensable injury and that even though Dr. K used "in all reasonable medical probability" in relating sexual dysfunction to the compensable injury he also said that it "could be" caused by the nature of the medical problems. She commented that Dr. M's reports lacked explanation of how the conditions were or could be caused by the compensable injury. Concerning the sexual dysfunction, Dr. K's report states "with reasonable medical probability, this could be caused by the nature of the medical problems, including the lesion he had in the back, and the chronic pain that he suffers, along with the chronic depression."

The burden is on the claimant to prove by a preponderance of the evidence the extent of an injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and it 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). The hearing officer properly placed the burden of proof on the claimant and used the proper standard in requiring medical evidence to meet the burden of proof. Her determinations concerning the extent of the compensable injury are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer that the compensable injury does not include hyperglycemia, high blood pressure, or sexual dysfunction, we will not substitute our judgment for hers and we affirm those determinations. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We next address the determination that the claimant's IR is 13% as certified by the designated doctor. At the CCH, the claimant contended that the IR assigned by Dr. W should not be adopted because Dr. W did not rate all of his compensable injury and that he should be sent back to Dr. W so that she could rate all of his compensable injury. The appeal of the claimant contains:

> and that he is entitled to the [IR] given by any of the following doctors, [Dr. M's] 20%, his treating doctor, [Dr. G's] 17% or [Dr. S's] 17%. Surely, this is sufficient to overcome the presumptive weight of the designated doctor's report.

Dr. W assigned 10% for a specific disorder of the lumbar spine under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Dr. W stated that because of her observations, she invalidated all lumbar range of motion (ROM) tests and felt that it was fair to award the claimant three percent impairment for loss of lumbar ROM. In a Report of Medical Evaluation (TWCC-69) Dr. G, a chiropractor, assigned a 17% IR. In a letter dated December 4, 1998, Dr. G, states that per the AMA Guides the claimant's IR is 17% and does not include an explanation of how he determined

the 17% IR. In an attachment to a TWCC-69, Dr. S stated that he invalidated lumbar flexion and extension ROM tests; assigned eight percent for a specific disorder under Table 49 of the AMA Guides, three percent for lumbar right lateral flexion, two percent for lumbar left lateral flexion, and five percent for neurological deficit; and used the combined values chart to determine the 17% IR. The record does not contain a TWCC-69 from Dr. M. In a letter dated April 20, 1999, Dr. M said "20% was given to [claimant] based on my clinical impression and especially following a number of visits to this physician." The letter does not contain any explanation has to what impairments make up the 20% IR.

Since we found the evidence to be sufficient to support the hearing officer's determination that the compensable injury does not include hyperglycemia, high blood pressure, or sexual dysfunction and in his appeal the claimant does not specifically request that the case be remanded for the designated doctor to rate those conditions, we need not address reversing and remanding for further evaluation by Dr. W. Even though at the CCH, the claimant did not specifically argue that the great weight of the other medical evidence is contrary to the report of the designated doctor we will comment on that in this decision. The 1989 Act sets forth a mechanism to help resolve conflicts concerning IR by according presumptive weight to the report of a doctor referred to as the designated doctor. Texas Workers' Compensation Commission Appeal No. 92495, decided October 28, 1992. If the Commission selects the designated doctor as was done in this case, the Commission shall base its determination of the claimant's IR on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). The Appeals Panel has 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 report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. No other doctor's report is accorded the special presumptive status given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. The hearing officer resolves conflicts in expert evidence and assesses the weight to be given to expert evidence. Campos, *supra*. The hearing officer determined that the report of the designated doctor is entitled to presumptive weight and that the great weight of the other medical evidence is not contrary to the report of the designated doctor. Those determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. King*, supra;* Pool*, supra.* We affirm the determination that the claimant's IR is 13% as certified by the designated doctor.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge