

## APPEAL NO. 001085

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 April 18, 2000. The hearing officer resolved the sole disputed issue, the appellant's (claimant) impairment rating (IR), by determining that her IR is 27% based on the report of Dr. A, the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant disputes the finding that Dr. A's IR determination is not contrary to the great weight of the other medical evidence and contends that her IR should be 60% as determined by her treating doctor, Dr. G. The respondent (carrier) contends in response that the evidence is sufficient to support the hearing officer's decision.

### DECISION

Affirmed.

Not challenged are findings of fact that on \_\_\_\_\_, the claimant sustained a compensable injury which resulted in a "Colles" fracture of her right wrist; that despite appropriate medical treatment and extended therapy, she developed reflex sympathetic dystrophy (RSD) of the right upper extremity; that Dr. A is the designated doctor appointed by the Commission; and that Dr. A certified that the claimant reached maximum medical improvement (MMI) on August 25, 1998, and assigned her a 27% IR. There was no dispute concerning the date the claimant reached MMI.

The claimant testified that although she writes with her left hand, she did use her right hand for baseball and operating scissors. She indicated she was relying on the medical evidence to establish that Dr. G's 60% IR is the correct rating because it rates all the aspects of her right upper extremity RSD. As noted, the claimant disputes the finding of fact that Dr. A's certification is not contrary to the great weight of the other medical evidence as well as the legal conclusion that her IR is 27%. Dr. G's records reflect that the claimant got the cast off her right wrist on October 28, 1997, and that he wrote on December 19, 1997, that the claimant developed a severe RSD of her right arm following a rather minimal Colles-type wrist fracture.

Dr. F, a clinical psychologist, reported on April 6, 1998, that the claimant suffers from multiple psychosocial problems as a result of chronic pain and functional decline and that she meets the criteria for a tertiary level of chronic pain management program.

Dr. G reported on August 25, 1998, that the claimant would not let him, her husband, a therapist, or anyone even touch her wrist because it is so sensitive; that she has the worst case of RSD he has ever seen; that she already has a flexion contracture which would require months of therapy and bracing to return her wrist to a functional position; and that she has no functional use of the right arm. Dr. G further stated that the claimant says she has absolutely no intention or desire for any further treatment, regardless of the mode; that, therefore, she has reached MMI; and that based on her contracture and lack of motion at the wrist and all fingers, she has 100% impairment of the right upper extremity which computes to a 60% whole person IR.

Dr. A's October 13, 1998, narrative report states that while working as a dock worker for (Employer), the claimant was injured on \_\_\_\_\_, when the carpet bag on which she was pulling broke, causing her to fall backwards onto her outstretched right wrist. He said that despite excellent healing of the wrist, the claimant developed RSD and her clinical course went steadily downhill and that several appropriate treatment modes were unsuccessful in reversing her deterioration. Dr. A stated his impression as RSD secondary to a Colles fracture of the right wrist and that the claimant's IR is determined based on "pain, discomfort, or loss of sensation" of the right hand and wrist. Dr. A then explained in detail how he calculated the 27% IR based on Tables 10 and 14 in the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

The Commission wrote Dr. A on January 3, 2000, asking that Dr. A review the July 28, 1999, letter from Dr. G and then advise whether his opinion remained the same or was changed. In that letter, Dr. G stated that he disagreed with Dr. A's evaluation; that while the claimant's shoulder and elbow functions and motions have improved, she has no useful function of her right wrist, hand, and fingers; that while her wrist has healed and she has normal anatomy of her hand and fingers, she demonstrates no ability to use her right extremity in any useful fashion; and that her functional impairment is at least as great as if she had suffered a mid-forearm amputation.

Dr. A responded to the Commission on January 26, 2000, stating that he reviewed the report and found no evidence to support changing his IR findings.

In his March 14, 2000, report, Dr. G states that the claimant was told at a conference that the AMA Guides do not contain an impairment schedule for RSD. However, Dr. G said he used various tables in the AMA Guides to assign specific ratings to the claimant's right thumb; all her right hand fingers; and her right wrist joint, elbow joint, and shoulder joint. He further stated that he is at a loss to explain the wide variance between his 60% IR and Dr. A's 27% IR, assuming they both examined the same patient and used the same AMA Guides.

With regard to the determination of an injured employee's IR, Section 408.125(e) provides that the report of the designated doctor selected by the Commission 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. The Appeals Panel has frequently noted the important and unique position occupied by the designated doctor under the 1989 Act., see, e.g., Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have just as frequently stated that a "great weight" determination amounts to more than a mere balancing or preponderance of the evidence (Appeal No. 92412) and that a designated doctor's report should not be rejected "absent a substantial basis to do so." Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We note that the claimant did not introduce medical evidence which specifically pointed out how Dr. A failed to correctly apply the AMA Guides in rating the claimant's compensable injury.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Judy L. Stephens  
Appeals Judge