APPEAL NO. 001146

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 24, 2000. The record closed on April 27, 2000. With respect to the single issue before her, the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 20%, as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in his amended report. In its appeal, the appellant (carrier) argues that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be manifestly unjust and asks that we either appoint a second designated doctor or "render a decision that the claimant's [IR] should be either 0% or 9% as supported by other medical evidence . . . ." The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that Dr. M was selected by the Commission to serve as the designated doctor; and that the claimant reached maximum medical improvement (MMI) on September 7, 1999. Because only the issue of the claimant's IR is before us on appeal, our factual recitation will be limited to those facts most relevant to that issue. The claimant testified that she injured her neck, low back, and left shoulder in her compensable injury. In a Report of Medical Evaluation (TWCC-69) dated August 8, 1999, Dr. O, the claimant's treating doctor, certified that the claimant reached MMI on August 6, 1999, with an IR of 19%. The carrier disputed that rating and the Commission selected Dr. M to serve as the designated doctor.

On September 7, 1999, Dr. M examined the claimant and on September 13, 1999, he completed a TWCC-69 certifying that the claimant reached MMI on September 7, 1999, with an IR of 18%, which was comprised of five percent for upper extremity range of motion (ROM) impairment, eight percent for loss of cervical ROM, four percent for a specific disorder of the cervical spine, and three percent for neurological impairment.

The carrier had Dr. C review Dr. M's MMI and IR certification. In an October 4, 1999, letter, Dr. C stated, in relevant part:

> The question concerning validity of the 18% whole person [IR] appears to be questionable relative to the objective data reviewed. The objective data does not sustain a neurological impairment on this claimant, nor the 4% 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)] impairment noted on the form submitted with this file. Upper extremity impairment also appears to be questionable in its calculations. My calculations would present a 9% impairment; however, I have not examined the claimant personally to determine this [IR].

On October 21, 1999, the Commission forwarded Dr. C's letter to Dr. M and asked him to respond to the questions raised. On October 29, 1999, Dr. M responded to the request for clarification. Dr. M stated that he should have assigned a six percent rating for cervical specific disorder rather than the four percent he had previously assigned. Otherwise, Dr. M reaffirmed that the ratings he assigned for the individual components were accurate; thus, he increased the claimant's IR from 18% to 20%.

On July 22, 1999, Dr. G, an orthopaedic surgeon, examined the claimant at the request of the carrier. In a July 26, 1999, report, Dr. G certified that the claimant reached MMI on May 1, 1999, with an IR of zero percent, stating that "[t]his is based on invalid effort and inconsistency in observed [ROM] versus [ROM] on formal testing." The carrier also had Dr. T conduct a records review in relation to the designated doctor's IR. In a February 4, 2000, letter, Dr. T stated that "the 18% (then 20%) [IR] by the Designated Doctor is not reflective of the effects of the _____, alleged accident." Dr. T further opined that "the 0% impairment is, in fact, accurate in this case; and that the Designated Doctor examination requires challenge."

At the hearing, the carrier emphasized that Dr. M's report states that he assigned a rating for the right upper extremity when it is settled that the claimant's injury was to her left upper extremity, namely the left shoulder. On March 24, 2000, the hearing officer sent a letter of clarification to the designated doctor asking if there was a typographical error in his report and whether he correctly rated the left shoulder or whether he needed to reexamine the claimant in order to rate the injured shoulder. In an April 12, 2000, response to the hearing officer's letter, Dr. M stated that the error was typographical and that "[t]he affected side-Left, was the side tested. The information previously presented is accurate in all other details."

The carrier argues that the hearing officer erred in giving presumptive weight to the designated doctor's 20% IR, asserting that either Dr. G's zero percent or the nine percent rating that Dr. C calculated from the parts of the designated doctor's report with which he agreed, should be adopted. The differences in the ratings of Dr. M and Drs. G and C are attributable to their respective determinations of what ratings to assign to the claimant for the various components of her IR for her cervical and shoulder injuries. More specifically, the differences concern whether cervical specific disorder and neurological ratings are properly assigned and the value to be assigned for loss of ROM in the left upper extremity and cervical spine. The decision of what rating to assign represents a difference of medical opinion. By giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e), the legislature has established a procedure where the designated doctor's resolution of such differences is to be accepted unless the great weight of the other medical evidence is contrary to his opinion. The opinions of Dr. G and Dr. C simply do not rise to the level of the great weight of the other medical evidence contrary to Dr. M's report. Accordingly, we cannot agree that the hearing officer erred in giving presumptive weight to Dr. M's amended report and, thus, determining that the claimant's IR is 20%.

On appeal, and at the hearing, the carrier asserts that the designated doctor "display[ed] an obvious bias against the Carrier" and contends that the existence of that bias provides a basis for the appointment of a second designated doctor. In her discussion, the hearing officer noted that there was no evidence of bias against the carrier by the designated doctor and we agree. The record simply does not support the assertion of bias and, as such, we find no merit in the carrier's assertion that a second designated doctor should have been appointed in this case.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge