APPEAL NO. 001219

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 26, 2000. The hearing officer determined that the report of Dr. A, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, is entitled to presumptive weight; that Dr. A's report is not contrary to the great weight of the other medical evidence; and that the appellant's (claimant) impairment rating (IR) is 14% as certified by Dr. A. The claimant appealed; contended that the report of Dr. A is incorrect because he should have assigned seven percent, not five percent, impairment 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); and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that his IR is 16% as certified by Dr. M, his treating doctor. The respondent (carrier) replied, stated that Dr. A explained why he assigned five percent, not seven percent, impairment for a specific disorder of the lumbar spine, and requested that the Appeals Panel affirm the decision of the hearing officer.

DECISION

We affirm.

Table 49, II of the AMA Guides applies to intervertebral disc or other soft tissue lesions. For the lumbar spine, it provides that the impairment is five percent for

> Unoperated with medically documented injury and a minimum of six months medically documented pain, recurrent muscle spasm or rigidity associated with none-to-minimal degenerative changes on structural tests.

It provides that the impairment is seven percent for

> Unoperated, with medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasm, or rigidity associated with moderate to severe degenerative changes on structural tests, including unoperated herniated nucleus pulposus, with or without radiculopathy.

A report of an EMG and nerve conduction study performed by Dr. B on October 30, 1997, states:

> MOTOR SYSTEM: Nerve conduction studies of the left and right peroneal and tibial nerves were normal. Left and right H-reflexes were delayed, the left more so than the right. All f-wave responses were normal.

SENSORY SYSTEM: Studies of the left and right superficial peroneal nerves were normal.

ELECTROMYOGRAPHY: A needle study of the left and right lower limbs spanning nerve root segments L4 through S2, including the paraspinals were entirely normal. Amplitudes and recruitment patterns were normal in all muscles tested.

COMMENT: This electrophysiological study is suggestive of an abnormality in the S1 nerve root distribution.

A report of an MRI dated January 22, 1998, contains the following impression:

1. Small vertebral body hemangioma L1.

2. Degenerative change in the discs throughout the lumbar region.

3. Mild posterior annular bulging L5/A1.

4. Mild spinal stenosis L2 through L4 inclusively.

5. Small posterocentral disc herniation L1/L2.

The claimant's treating doctor, Dr. M, assigned seven percent impairment for a specific disorder of the lumbar spine. Dr. R testified that he gave the claimant a seven percent impairment for a specific disorder of the lumbar spine; that he bases his opinion on what patients tell him and then he corroborates that with what he sees on tests; that if 10 doctors look at an MRI, everyone is going to have a different conclusion; that a disc herniation may impinge on a nerve root sometime, but not necessarily all the time; and that he disagrees with the five percent impairment assigned by Dr. A.

In a Report of Medical Evaluation (TWCC-69) dated June 21, 1999, Dr. A assigned a 14% IR, including five percent for a specific disorder of the lumbar spine and two percent for loss of lumbar range of motion (ROM). In a narrative attached to the TWCC-69, Dr. A summarized MRI and EMG and nerve conduction reports and wrote:

> There is no obvious paraspinous muscle spasm [in] lumbar spine. There is no evidence of spinal aysemetry or scoliosis. [ROM] [sic, of] lumbar spine was measured using double inclinometers and the patient was found to have limitation of forward flexion of the lumbar spine or 2% of whole body impairment. The neurologic examination including muscle testing, sensory testing, and deep tendon reflex testing failed to reveal any evidence of focal neurologic deficit.

In a letter dated September 20, 1999, a Commission benefit review officer asked Dr. A if seven percent impairment for a specific disorder of the lumbar spine was appropriate. In a letter dated September 22, 1999, Dr. A wrote:

> This patient complained of a low back injury. He had no neurologic findings on clinical examination. The EMG result was "Suggestive." My interpretations of the AMA Guides is that the patient must demonstrate clinical findings in order to qualify for an impairment for neurologic deficit. An electromyogram does not in itself constitute clinical finding but is a diagnostic study that is sometimes used to support clinical findings.
>
> The patient had a small disc herniation at the L1-2 level noted on the MRI study. This was a very small disc herniation and I believe it was an incidental finding and probably unrelated to the patient's work injury.
>
> The patient's primary symptoms involved a low back injury and as you know the L1 intervertebral disc is at the thoracolumbar junction.
>
> For the reasons stated above, I do not feel that an [IR] from Table 49 IIC is appropriate for this injury.
>
> For the sake of argument however, the patient did have an MRI study that indicated that he had an intervertebral disc herniation at the L1 interspace level which might technically qualify him for an [IR] of 7% under Table 49 IIC provided it is established that this intervertebral disc injury or disc herniation is a direct result of the work injury under consideration.
>
> It is my opinion that the findings at the L1 intervertebral disc space were unrelated to the patient's work injury and was producing no significant symptoms. That is the reason why I believe that the [IR] under Table IIB was appropriate at 5%.

The decision to include or not to include impairment for a specific disorder under Table 49 of the AMA Guides represents a medical difference of opinion as to whether a claimant's compensable injury resulted in permanent impairment in a claimant's discs or soft tissue. Texas Workers' Compensation Commission Appeal No. 951921, decided December 11, 1995. In Texas Workers' Compensation Commission Appeal No. 962293, decided December 20, 1996, the designated doctor explained why he did not assign impairment for a small herniated nucleus pulposus and the Appeals Panel affirmed the decision of the hearing officer that did not include impairment for a specific disorder of the lumbar spine. In the case before us, the hearing officer determined that the report of the designated doctor is entitled to presumptive weight, that the great weight of the other medical evidence is not contrary to that report, and that the claimant's IR is 14%. The hearing officer did not err in making those determinations.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge