

APPEAL NO. 001396

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 May 26, 2000. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is seven percent, but did not accord presumptive weight to the designated doctor's report. Instead, the hearing officer found that the great weight of contrary medical evidence was against the report, and that it further was not done in conformity with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

The claimant appealed and urged that the designated doctor correctly performed her range of motion (ROM) testing. The respondent (self-insured) responded that the decision is correct.

DECISION

We affirm the hearing officer's decision.

The hearing officer has summarized the evidence and we will be more succinct here. There was no testimony, but only argument at the CCH.

The claimant sustained a back injury on _____, while employed as a security guard by the self-insured. The medical records in the file refer to a functional capacity evaluation determination that the claimant could do sedentary- to light-capacity work as of August 31, 1998.

According to other records in the file, it can be ascertained that the claimant was evaluated for maximum medical improvement (MMI) and IR on April 21, 1998, and assigned a seven percent IR by Dr. S. A copy of this report is not in evidence. Thereafter, a designated doctor, Dr. O, determined that the claimant was not at MMI as of June 17, 1998. The claimant was treated conservatively. She was examined again by Dr. S on March 17, 1999, and again assigned a seven percent IR. Dr. S observed that claimant had a sitting straight leg raise (SLR) test result of 90E, and supine measurements of 70E and 55E. She invalidated the flexion and extension ROM lumbar tests based upon the variance of greater or less than 10E of the tightest SLR ROM from the sum of the sacral flexion and extension angles. We note that the SLR test is a way of checking for voluntary limitations on motion.

Dr. S noted that the lateral lumbar ROM would have yielded a five percent IR, except that based upon her previous measurements in this regard, and her clinical observations of the claimant, she found significant inconsistency and thus did not include this five percent, apparently believing that it did not reflect an actual affect of the injury on the ability to move because more normal movements were observed when measurements were not being taken.

Dr. O reexamined the claimant on June 10, 1999, and assigned a 17% IR. Of this, 11% was for abnormal motion, with only one percent for lateral lumbar ROM. The underlying figures were not attached to this original report--only a summary was included. A peer review doctor for the carrier, Dr. N, questioned these figures, noting that they appeared to be invalidated by the SLR test figures recorded. That is, the total sacral flexion and extension movement was shown as 38E, while the tightest SLR was 22E, a variance of 16E, which exceeded the 10E parameter of validity. Dr. N also pointed out that one of the claimant's extension measurements was not anatomically possible.

When this was brought to Dr. O's attention, he responded on October 29, 1999, by forwarding measurements from three ROM tests. The person who performed ROM testing recorded the following figures for flexion and extension.

Flexion

T12 ROM	53	47	45
Sacral ROM	27	19	16
True lumbar flexion angle	26	28	29
Maximum true angle	29		

Extension

T12 ROM	19	2	19
Sacral ROM	0	22	0
True lumbar ext. angle	19	20	19
Maximum true angle	20		
Right SLR	24	24	24
Left SLR	22	18	22

Dr. O indicated that the three measurements met the consistency requirements with each other as being within 10% or five degrees and therefore did not perform additional ROM trials.

Dr. O wrote to the Texas Workers' Compensation Commission (Commission) at least one more time to explain why these measurements were not invalidated by the SLR testing. It was clear that one belief that he held was that the SLR recorded degree had to be a higher number by more than 10 than the sum of the sacral flexion and extension. He did not correct this report when instructed what the Commission's interpretation of "exceeded" was.

The report of a Commission-appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumptive, a "great weight," is more than a preponderance, which would be only greater than 50%. See Texas Workers' Compensation Commission Appeal No.

92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992.

However, presumptive weight does not mean a "rubber stamp" adoption of the designated doctor's report where the hearing officer weighs the evidence and determines that the great weight of other medical evidence proves that the claimant is not at MMI, or that the percentage of impairment is not accurate. See Texas Workers' Compensation Commission Appeal No. 94053, decided February 23, 1994. Because of noncompliance with the AMA Guides by Dr. O, the great weight of other medical evidence was against his IR.

When the hearing officer determines that the designated doctor's report is against the great weight of the contrary medical evidence, another report on IR must be adopted. Section 408.125(e). The only other report in evidence was that of Dr. S.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Robert W. Potts
Appeals Judge