APPEAL NO. 001408

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 13, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on October 16, 1998, with an impairment rating (IR) of 13% based upon the amended report of the designated doctor. The claimant appeals, contending her entire injury was not rated and that her IR should have been based upon the 16% IR of her treating doctor. The respondent (carrier) replies that the decision of the hearing officer was supported by the evidence and should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

It was undisputed that the claimant suffered a compensable injury on _____. The claimant, a licensed vocational nurse, described her injury as taking place when she injured her arm while lifting a patient. The claimant has undergone a cubital tunnel release and a carpal tunnel release on the left. The claimant has also undergone sympathetic ganglion blocks due to reflex sympathetic dystrophy (RSD). Dr. C, a carrier-selected doctor, certified that the claimant attained MMI on May 4, 1998, with a 16% IR. Dr. G was selected by the Texas Workers' Compensation Commission (Commission) to be the designated doctor and he initially certified that the claimant attained MMI on May 4, 1998, with a nine percent IR. Dr. D, the claimant's treating doctor, testified at the CCH and criticized Dr. G's method of rating the claimant's IR. After the CCH, the hearing officer sought clarification from Dr. G concerning his assessment of IR and Dr. G responded by a letter of May 3, 2000, and amended his IR assessment to 13%.

Section 408.125(e) provides:

> If the designated doctor is chosen by the commission, the report of the designated doctor 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. If the great weight of the medical evidence contradicts the [IR] contained in the report of the designated doctor chosen by the commission, the commission shall adopt the [IR] of one of the other doctors.

We have previously discussed the meaning of Athe great weight of the other medical evidence@ in numerous cases. We have 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 designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the

report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, the hearing officer found that the IR certification of the designated doctor as amended by his letter dated May 3, 2000, was not contrary to the great weight of the other medical evidence. The claimant argues that the designated doctor showed in his clarification letter that he was unfamiliar with his own reports and that he failed to rate the claimant's RSD, thereby not rating her entire injury. The claimant argues that Dr. D, in his testimony, explained the proper way to rate impairment from RSD. We note that the hearing officer in his letter of April 20, 2000, to Dr. G enclosed a copy of Dr. G's previous reports, so Dr. G was able to rely upon his previous reports in issuing his May 3, 2000, letter. As far as rating RSD is concerned, we note that the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association does not provide a specific method of rating RSD per so and that the difference in the methods of Dr. G and Dr. D in rating RSD appears to be simply a difference of medical judgment. Dr. G explicitly stated that he considered the claimant's RSD.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Elaine M. Chaney
Appeals Judge