APPEAL NO. 001510

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 31, 2000. The hearing officer determined that the appellant's (claimant herein) correct impairment rating (IR) is 11% and the claimant's correct date of maximum medical improvement (MMI) is October 23, 1998, based upon the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals, asking that we either send him to a second designated doctor or render a decision that he reached MMI on August 16, 1999, with an eight percent IR based upon a certification by his treating doctor. The respondent (carrier herein) replies that the evidence supports the decision of the hearing officer.

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.

The parties stipulated that the claimant sustained a compensable injury on _____, and that the designated doctor appointed by the Commission was Dr. P. The claimant was injured at work when a vending machine fell on him injuring his pelvis, hips, lower extremities, and low back. The first certification of MMI and IR was certified by Dr. T, a carrier-selected required medical examination doctor. Dr. T certified on a Report of Medical Evaluation (TWCC-69) dated October 28, 1998, that the claimant attained MMI on October 21, 1998, with a 10% IR. The designated doctor process was invoked and Dr. P certified on a TWCC-69 dated January 7, 1999, that the claimant attained MMI on October 23, 1998, with a five percent IR. After the Commission forwarded to Dr. P a letter from Dr. H, the claimant's treating doctor, Dr. P amended his certification to include impairment for the claimant's lower extremities due to injury to the claimant's hip. In his amended TWCC-69 dated March 25, 1999, Dr. P certified the claimant attained MMI on October 23, 1998, with an 11% IR. Dr. H later certified on a TWCC-69 dated August 16, 1999, that the claimant reached MMI on August 16, 1999, with an eight percent IR.

Dr. H testified live at the CCH and renewed his criticisms of Dr. P's certification. Dr. H testified that the fact that the claimant improved with continued care after October 23, 1998, showed that the claimant was not at MMI on that date. Dr. H also criticized Dr. P for retesting lumbar range of motion (ROM) after initially validating loss of ROM, resulting in an invalidation of loss of ROM. Dr. P had stated in his response to Dr. H's initial letter that he had retested because he was suspicious of the results of the initial ROM testing based upon his clinical observation.

Section 408.122(c) provides:

> If a dispute exists as to whether the employee has reached [MMI], the commission shall direct the employee to be examined by a designated doctor

> chosen by mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission. The designated doctor shall report to the commission. The report of the designated doctor has presumptive weight, and the commission shall base its determination of whether the employee has reached [MMI] on the report unless the great weight of the other medical evidence is to the contrary.

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 "the 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 contested case 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, 702 (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, 290 (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, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard, we find sufficient evidence to support the decision of the hearing officer. There was conflicting medical evidence and medical opinions and it was the province of the hearing officer to determine what weight to give these opinions. We will not substitute our opinion for hers in this regard.

The claimant alleges on appeal that both Dr. T and Dr. P were biased against him. We find no evidence in the record to support this allegation.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Section Manager/Judge

Philip F. O'Neill
Appeals Judge