

APPEAL NO. 001597

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 June 22, 2000. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 10% in accordance with the report of the designated doctor, which she found was not against the great weight of the contrary medical evidence.

The claimant appeals and argues that her treating doctor's IR is more accurate because he saw her more often. The respondent (carrier) responds by citing Section 408.125(e) and Appeals Panel decisions in favor of according presumptive weight to the designated doctor's report. The carrier notes that use of Table 50 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) would not have been appropriate in this case.

DECISION

We affirm the hearing officer's decision.

The claimant was employed by (employer) and was injured as she pulled on a garden-area gate at the store. It was stipulated that this was an injury to her lumbar spine. The claimant had lumbar surgery on August 26, 1998. She had a prior neck injury in 1995 that had resulted in a 14% IR.

Claimant's treating doctor was Dr. P. He assigned a 17% IR, which consisted of 10% for specific conditions, and eight percent for range of motion (ROM) deficits. The designated doctor was Dr. Q. Dr. Q assigned a 10% IR, finding ROM testing to be invalid. Although it was not clear, Dr. P indicated that he may have used Table 50 for ankylosis to evaluate lost ROM. The date of maximum medical improvement of March 25, 1999, was stipulated.

The claimant said she felt pain during the examination, and the doctor "helped" her. She said that she gave her best efforts during the test. Dr. Q stated in his report that measurements were taken twice but invalidated by the straight leg raising test. There was no impairment which resulted from lateral lumbar motion.

The report of a Texas Workers' Compensation Commission (Commission)-appointed designated doctor is given presumptive weight. Section 408.125(e). The amount of evidence needed to overcome the presumption, 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. We have before stated that Table 50 may not be used as a simple alternative to the

ROM testing otherwise provided in the AMA Guides, and is appropriate only when there is immobility in the hips and the spine, a rare occurrence. Texas Workers' Compensation Commission Appeal No. 970202, decided March 24, 1997.

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 and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We accordingly find that the hearing officer correctly applied the law to the facts, and affirm her decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge