

APPEAL NO. 001659

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 23, 2000. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is one percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In her appeal, the claimant asserts error in the hearing officer's having given presumptive weight to the designated doctor's IR. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The parties resolved an issue concerning the claimant's date of maximum medical improvement (MMI) by stipulating that she reached MMI on December 17, 1998.

DECISION

Affirmed.

Because only the issue of the claimant's IR is before us on appeal, our factual recitation will be limited to those facts most germane to that issue. It is undisputed that the claimant sustained a compensable injury to her neck, right elbow, and right shoulder on _____. In a Report of Medical Evaluation (TWCC-69) dated March 1, 1999, Dr. C, the designated doctor, certified that the claimant reached MMI on December 17, 1998, with an IR of one percent, which was assigned for loss of range of motion (ROM) in the claimant's cervical spine. In his narrative report, Dr. C stated that he was not assigning a diagnosis-related impairment for the cervical spine because "there is no objective clinical or medical findings of impairment resulting from a compensable injury, based on competent objective medical evidence." Dr. C further noted that he was assigning a zero percent IR for both the claimant's right shoulder and her right elbow, stating that there was no objective evidence of a diagnosis impairment, that ROM was normal, and that there is no objective and measurable evidence of motor or sensory deficits in the right shoulder or right elbow.

In a TWCC-69 dated October 19, 1999, Dr. M, the claimant's treating doctor, certified that the claimant reached MMI on September 27, 1999, with an IR of 14%, which was comprised of four percent for a specific disorder of the cervical spine, one percent for loss of ROM in the cervical spine, four percent for the scar on the claimant's right elbow, one percent for loss of sensation in the small finger and the ulnar side of the ring finger on the claimant's right hand, and four percent for mild crepitation in the right shoulder. On April 11, 2000, Dr. M reduced his IR to 10%, removing the four percent he had assigned for the right elbow scar. In all other respects, Dr. M's IR remained unchanged.

On February 3, 2000, the designated doctor responded to written questions which had been forwarded to him by the Commission. In response to the question of why he had not assigned a specific disorder rating for the claimant's cervical spine, Dr. C stated that he had not assigned a rating because the cervical MRI did not reveal evidence of an "acute

injury causally related to compensable injury.” Dr. C stated that he did not assign a rating for sensory loss to the small and ring fingers on the right hand because his examination did not demonstrate a sensory loss on two-point discrimination testing. Finally, Dr. C explained that he did not assign a rating for right shoulder crepitation because it was not present on his examination.

The claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's one percent IR, asserting that Dr. M's 10% rating should be adopted. The difference in the ratings of Dr. C and Dr. M is attributable to their respective determination of whether to assign a rating for a specific disorder of the cervical spine, sensory loss in the small and ring fingers on the right hand, and for right shoulder crepitation. Dr. M assigned a four percent, one percent, and four percent rating respectively for those components, while Dr. C assigned a zero percent rating for those components. The decision of whether to assign a rating for those elements of the claimant's compensable injury represents a difference of medical opinion. By giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e), the legislature has established a procedure where the designated doctor's resolution of such differences is to be accepted. Although there is other medical evidence confirming the sensory deficit in the fingers and the right shoulder crepitation, there is also medical evidence in the record denying the existence of shoulder crepitation and stating that the claimant has full sensation in the digits on her right hand. Our review of the record does not demonstrate that the great weight of the other medical evidence is contrary to Dr. C's report. Accordingly, we cannot agree that the hearing officer erred in giving presumptive weight to Dr. C's report and, thus, determining that the claimant had an IR of one percent.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge