

APPEAL NO. 001669

On June 16, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is four percent as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant requests that the hearing officer's decision be reversed and that a decision be rendered that she has a 19% IR. The respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

According to medical records, the claimant fell over a table at work on _____. The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement (MMI) on May 11, 1999; and that the Commission appointed Dr. V as the designated doctor.

Dr. R, the claimant's treating doctor, diagnosed the claimant with reflex sympathetic dystrophy (RSD). Dr. R referred the claimant to Dr. RA who also diagnosed the claimant as having RSD. Dr. H, another referral doctor, wrote that the claimant can have a sympathetic dystrophic component. The claimant underwent a cervical facet rhizotomy in October 1998. In 1999, the claimant underwent stellate ganglion blocks for a diagnosed condition of RSD. Dr. G, another referral doctor, diagnosed the claimant with chronic pain syndrome. Dr. B, another referral doctor, diagnosed the claimant as having left frozen shoulder syndrome, myofascial pain syndrome affecting the claimant's neck, and small protruding discs at C4-5 and C5-6. An MRI of the claimant's left shoulder done in January 1999 was normal and an MRI of the claimant's cervical spine done in January 1999 showed a small disc protrusion at C5-6 consistent with a small herniated nucleus pulposus and a small disc protrusion at C4-5.

On May 13, 1999, Dr. R certified that the claimant had reached MMI with a 21% IR. Dr. R assigned impairment of six percent for a specific disorder of the cervical spine, eight percent for loss of cervical range of motion (ROM), six percent for loss of shoulder ROM, and two percent for "neurologic system." Dr. R wrote that "these are combined via the Combined Tables for a 21% whole person impairment for the development of [RSD] in neck and shoulder as well as upper extremity." In June 1999, Dr. R revised the IR to 19% to correct her calculations on shoulder ROM.

On October 19, 1999, Dr. V, the designated doctor, certified that the claimant had reached MMI with a four percent IR. Dr. V examined the claimant and reviewed medical records. The four percent IR was for a specific disorder of the cervical spine. Dr. V invalidated cervical and shoulder ROM due to the claimant's poor effort and voluntary

restriction of motion. Dr. V noted that the claimant had no true cervical radicular symptoms and that the claimant gave inconsistent pain descriptions. Dr. V noted that the claimant had been given a diagnosis of RSD but that he did not feel that the claimant has that diagnosis and that the claimant's subjective complaints far outweighed any objective findings. Dr. V stated that the claimant's subjective sensory changes were not documented objectively by his examination of the claimant. Dr. V also stated that the claimant manipulated her sensory changes and that there was a strong suspicion of symptom magnification.

Dr. RP reviewed the claimant's medical records at the request of the claimant's attorney and he reported that the claimant suffers from RSD and that the 19% IR assigned by Dr. R was appropriate. Dr. RA reported in February 2000 that the claimant had had a spinal cord stimulator implanted in her neck for upper extremity RSD.

Section 408.125(e) provides that, 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, and that, 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. Section 408.122(a) provides that a claimant may not recover impairment income benefits unless evidence of impairment based on an objective clinical or laboratory finding exists, and that, if the finding of impairment is made by a doctor chosen by the claimant and the finding is contested, a designated doctor or a doctor selected by the insurance carrier must be able to confirm the objective clinical or laboratory finding on which the finding of impairment is based.

The hearing officer found that the great weight of other medical evidence is not contrary to Dr. V's report and that the claimant has a four percent IR. The claimant contends that Dr. V's report is invalid because Dr. V failed to provide an IR for the entire compensable injury in that he did not rate the claimant's RSD, and that the great weight of the medical evidence overcame the IR assigned by Dr. V. Dr. V indicated in his report that his examination of the claimant did not reveal objective findings of RSD and that the claimant was manipulating her symptoms. While there is evidence to the contrary, it was for the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), to determine what facts had been established from the evidence presented. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge