APPEAL NO. 001703

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 herein) impairment rating (IR) is six percent based upon the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals, arguing that the designated doctor did not properly rate his impairment. The claimant argues that the designated doctor did not personally conduct the examination and that the designated doctor failed to rate range of motion (ROM) as required by the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The claimant finally contends that the great weight of the other medical evidence is contrary to the six percent IR assessed by the designated doctor. The respondent (carrier herein) replies that the designated doctor is allowed to base his opinion on examinations performed by other doctors as long as he personally examines the claimant as was done in the present case. The carrier further argues that a designated doctor may invalidate impairment due to loss of ROM based upon personal observation. Finally, the carrier submits that the opinion of the treating doctor in the present case did not constitute the great weight of the medical evidence.

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 relevant facts of the present case were largely undisputed. The parties stipulated that the claimant sustained a compensable injury to his cervical and lumbar spine on _____, and that he achieved maximum medical improvement (MMI) on August 30, 1999. Dr. T, the claimant's treating doctor, certified on a Report of Medical Evaluation (TWCC-69) dated October 20, 1998, that the claimant attained MMI on October 20, 1998, with a 10% IR. This rating consisted of four percent whole body impairment for specific disorders of the claimant's cervical spine, four percent for loss of ROM to the claimant's cervical spine, and two percent for loss of ROM to the lumbar spine. The claimant disputed this certification and the Commission selected Dr. M to be the designated doctor.

Dr. M examined the claimant on February 24, 1999, and certified on a TWCC-69 of the same date that the claimant had not yet attained MMI. Dr. T issued a second TWCC-69 dated November 4, 1999, in which he certified that the claimant attained MMI on August 30, 1999, with a 25% IR. This IR consisted of several components of whole body impairment which Dr. T combined to reach the 25% IR. These components included four percent for specific impairments to the cervical spine, five percent for specific impairments to the lumbar spine, 10% for loss of cervical ROM, and nine percent for loss of lumbar ROM. The carrier disputed this certification and the claimant was again sent to Dr. M. Dr. M issued a TWCC-69 dated December 14, 1999, in which he certified the claimant as

reaching MMI on August 30, 1999, with a six percent IR. This rating was based upon specific disorders of the cervical spine. Dr. M stated in his report that he did not assess impairment for loss of ROM due to the fact "it was observed that the examinee voluntarily restricted his motion due to psychological overlay and fear of re-injury." Dr. M did attach worksheets showing the results of ROM testing.

Dr. T stated in a letter dated January 26, 2000, that Dr. M's IR was inaccurate because it did not include impairment for lack of ROM. The claimant testified that Dr. M was the one who examined him during the initial February 1999 examination, but that the December 1999 examination was conducted by someone else who the claimant described as the receptionist in Dr. M's office. The claimant did testify that during the December 1999 examination Dr. M did come in the examining room for a minute or two.

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).

The claimant argues that Dr. M's December 1999 examination was inadequate because Dr. M did not personally do ROM testing or personally examine the claimant. We have discussed the issue of the sufficiency of a designated doctor's examination many times. We have stated that the designated doctor may rely upon ROM testing done by others and that the length of the examination is not controlling in determining the sufficiency of the examination. *See, generally,* Texas Workers' Compensation Commission Appeal No. 960406, decided April 15, 1996. We find no reason to find that Dr. M's examination was inadequate as a matter of law. Also, the claimant argues that Dr. M's IR certification was incorrect because he did not assess IR for loss of ROM. We have held many times that a designated doctor may discount loss of ROM based upon personal observation. While the claimant argues that this is contrary to the AMA Guides, he points to no specific language in the AMA Guides which would deprive the designated doctor from exercising his or her professional judgment based upon clinical observation in this regard.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge