

APPEAL NO. 001793

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 July 11, 2000. The issues at the CCH were extent of injury, maximum medical improvement (MMI), and impairment rating (IR). The hearing officer found that the respondent's (claimant herein) right shoulder injury extended to include his neck, acromioclavicular osteoarthritis, and right shoulder impingement. The hearing officer also found that based on the report of a designated doctor the claimant had not reached MMI and therefore there could be no IR assessed. The appellant (carrier herein) files a request for review arguing that the evidence is contrary to the hearing officer's findings that the claimant's injury extended to include his neck, acromioclavicular osteoarthritis, and right shoulder impingement and that these findings should be reversed. The carrier also argues that the hearing officer should have found that the claimant was at MMI on April 27, 1999, with a zero percent IR based upon the certification of Dr. RP. There is no response from the claimant to the carrier's request for review in the appeal file.

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 hearing officer summarizes the evidence in her decision and we adopt her rendition of the evidence. We will only briefly touch upon the evidence germane to the appeal. This included the fact that it was undisputed that the claimant suffered a compensable injury on January 8, 1999, and the parties stipulated the carrier accepted that this injury included a right shoulder strain. The claimant testified that his injury took place when he was operating a laminator and it jammed; he reached halfway into the 200-foot machine to pull on shingles. The claimant stated that when the drop plate fell down, 100 pounds of its pressure knocked him down injuring his back, neck and right shoulder. Several doctors expressed opinions as to the extent of the claimant's injury with Dr. V and Dr. H relating the claimant's shoulder and neck injuries to the compensable injury. Dr. R also stated that the claimant's injury included an injury to his neck and right shoulder as well as specifically relating his right shoulder impingement and acromioclavicular osteoarthritis to his injury. Dr. P did a medical record review for the carrier and expressed the opinion that the claimant only sustained a strain of the right shoulder. Dr. P, the carrier's required medical examination order doctor, stated that he felt the claimant may have exacerbated a 1996 shoulder injury, but did not think the claimant actually suffered a new injury. Dr. P certified on a Report of Medical Evaluation (TWCC-69) dated December 1, 1999, that the claimant attained MMI on April 27, 1999, with a zero percent IR. This IR was disputed and the Texas Workers' Compensation Commission (Commission) chose Dr. G to be the claimant's designated doctor. Dr. G certified on a TWCC-69 dated January 25, 2000, that the claimant had not yet reached MMI. Dr. G reiterated this opinion in the letter of clarification stating that the claimant needed further evaluation and possible surgery for his right shoulder impingement.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 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 great weight and preponderance 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 no error in the hearing officer's extent-of-injury determinations. The medical evidence was conflicting and it was up to her to resolve this conflict in the evidence. Her extent-of-injury determinations found support in the medical evidence as well as in the testimony of the claimant and we do not find that the contrary evidence constitutes the overwhelming evidence.

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. Applying our standard of factual review discussed we perceive no error in the hearing officer's reliance on the report of the designated doctor and no finding that the report of the carrier's required medical examination order constituted the great weight of the evidence contrary to the report of the designated doctor.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge