APPEAL NO. 001809

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 May 25, 2000, with the record closing on June 9, 2000. The CCH was held to determine the appellant's (claimant) impairment rating (IR). The hearing officer resolved the disputed issue by deciding that the claimant's IR was 13% as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed requesting that the hearing officer's decision be reversed and that a decision be rendered that he has a 22% IR. The respondent (carrier), although properly notified, did not appear at the hearing, responded to a notice to show cause for its failure to appear but did not file a response to the appeal.

DECISION

Affirmed.

The claimant testified that he worked as a truck driver for the employer on _____, and sustained an injury to his neck and left shoulder. On August 20, 1998, the claimant had arthroscopic subacromial decompressive surgery. The claimant's treating doctor, Dr. R, certified that the claimant reached maximum medical improvement (MMI) on January 13, 1999, with a 22% IR. The Commission appointed Dr. M as the designated doctor who examined the claimant. By Report of Medical Evaluation (TWCC-69) dated July 13, 1999, Dr. M certified the claimant to have reached MMI on January 13, 1999, with a 13% IR.

The claimant testified that he did not agree with the IR given to him by Dr. M and that Dr. M told him that he should have been examined by the company doctor before coming to see him.

Medical records from Dr. M reflect that the claimant presented with complaints of achy pain to the left side of his neck and shoulder. Dr. M diagnosed the claimant with an impingement syndrome of the left shoulder and a cervical strain/sprain. The claimant was given a 10% impairment of the cervical spine due to loss of range of motion and a 3% whole person IR for the left shoulder. Using the combined values chart from the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, the designated doctor combined the impairments to derive a 13% whole person IR. He declined to consider Tables 10 and 11 involving motor sensory abnormalities since he felt there were no objective tests to support a deficit in the left upper extremity and because the claimant's left hand grip strength was not that significantly less than for the right hand. The designated doctor declined to amend his IR when presented with Dr. R's rebuttal narrative.

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. M's report and that the claimant has a 13% IR. 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. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge