APPEAL NO. 001826

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 13, 2000. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) impairment rating (IR) was 15% as certified by Dr. H, the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) appealed the adverse determination contending that the great weight of the other medical evidence was contrary to the report from the designated doctor and requested that the decision be reversed and a decision rendered that the claimant's IR is 10% as assigned by her treating doctor, Dr. B.

DECISION

Affirmed.

Very little testimony was taken at the CCH. The parties stipulated that the claimant sustained a compensable injury on _____, and that she reached maximum medical improvement (MMI) on January 10, 2000. The claimant testified that she had not been diagnosed with any herniated discs in her neck or lower back and that she had suffered a back strain. She testified that she initially saw Dr. K in either May or June 1999 for complaints of lower back pain and neck pain and that the claimant had "passed out" a couple of times after the date of the injury. The claimant stated that on August 9, 1999, her lower back and neck were still hurting. No other testimony was taken.

The carrier argued that medical records did not substantiate six months of medically-documented pain in the neck and lower back prior to the designated doctor's report and, therefore, Dr. H should not have awarded an impairment for specific disorders of the cervical and lumbar spine. The carrier also argued that the cervical and lumbar strain/sprains had resolved prior to Dr. H's examination so no residual range of motion (ROM) deficits should have been awarded and an IR of 15% was excessive. They argued that since Dr. B declined to award any impairment for abnormal ROM just four days prior to Dr. H evaluating the claimant and that, since the MRIs of the cervical and lumbar spine were interpreted as normal, there should not be any impairment allowed.

The claimant argued at the CCH that an EMG demonstrated that she had an L5 nerve root irritation and a C5 radiculopathy and that the medical records did document six months of pain in the cervical and lumbar regions.

A medical record from Dr. K dated August 9, 1999, reflects that he treated the claimant for a possible seizure disorder but that two EEGs had been interpreted as normal. Progress notes from Dr. B, the treating doctor, were not offered by either party. Dr. Bu wrote a letter dated October 26, 1999, reflecting that he had evaluated the claimant for a required medical examination. He noted the claimant reported a closed head injury, as well as some multiple bruises and cuts, and that she was transported to a local hospital

after the accident where she was diagnosed with a cervical, thoracic, and lumbar sprain. He also noted that the claimant had thereafter come under the treatment of Dr. B and had received 24 weeks of chiropractic care and that Dr. K had been treating her seizures. Dr. Bu noted that the claimant was diffusely tender in her cervical paraspinal areas from C4-7 and from L2-5 bilaterally. He wrote, however, that she "no doubt has recovered from any musculoskeletal problems from that." Because of the ongoing problems with seizures, he declined to certify that the claimant had reached MMI and speculated that she would achieve MMI in about four months. He did not believe that any further chiropractic care was necessary for the spine.

Dr. B examined the claimant on January 4, 2000, and by a Report of Medical Evaluation (TWCC-69) dated January 6, 2000, and a narrative dated January 5, 2000, he reported that as a result of the accident on _____, the claimant was treated for complaints of neck pain, left shoulder pain with arm pain, mid-back pain, low back pain, chest pain, headaches and dizziness. During his examination, he noted spasms and tenderness in the cervical and lumbar regions and that the ROM was slightly restricted in the cervical but not the lumbar spine. Dr. B assigned the claimant a four percent specific disorder of the cervical spine for six months of medically documented pain, recurrent muscle spasm, or rigidity associated with none-to-minimal degenerative changes on structural tests. Dr. B assigned the claimant a six percent specific disorder for six months of medically documented pain. The two impairments combined for a whole person IR of 10%. No impairment was assigned for a seizure disorder as the claimant had reported that she had not had any seizures in over one month.

Dr. H's narrative report attached to a TWCC-69 dated January 15, 2000, reflects that she examined the claimant on January 10, 2000, and the claimant provided a history to her of sustaining an injury to her head, neck, back, and extremities when she was involved in a motor vehicle accident. Dr. H noted that MRIs of the cervical and lumbar spine and a CT scan of the brain were unremarkable and that a nerve conduction study revealed a C5 radiculopathy and L5 nerve irritation bilaterally. During the examination, Dr. H noted that the claimant complained of right-sided neck pain with intermittent dizziness and headaches and that her back symptoms seemed to have resolved. Dr. H found that cervical and lumbar ROM was diminished. Dr. H assigned the claimant a four percent impairment for the cervical spine and a five percent impairment for the lumbar spine using Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Dr. H also assigned the claimant a six percent impairment for the cervical spine for abnormal ROM. Using the combined values chart, Dr. H determined that the claimant had a 15% whole person impairment.

By letter dated February 2, 2000, Dr. L provided a peer review at the carrier's request. Dr. L noted the negative findings of the CT scan of the brain and MRIs of the cervical and lumbar spine, as well as the nerve conduction studies showing a C5 radiculopathy and L5 nerve irritation bilaterally. Dr. L found the 15% IR from Dr. H inappropriate because she felt there was not six months of medically documented pain,

recurrent muscle spasm or rigidity as required by Table 49, IIB of the AMA Guides and, because the MRIs were normal, no ROM testing could be considered valid.

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 the other medical evidence was not contrary to Dr. H's report and that the claimant has a 15% IR. While there is evidence to the contrary regarding documentation of pain, spasms, or rigidity, 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. The claimant also offered the nerve conduction studies as objective clinical evidence of an impairment in the cervical and lumbar spine. 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.

We affirm the hearing officer's decision and order.

_____
Kathleen C. Decker
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge