APPEAL NO. 001884

Following a contested case hearing held on July 12, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that respondent's (claimant) impairment rating (IR) is 17% based upon the amended report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The appellant (self-insured) files a request for review, arguing that the designated doctor's earlier IR assessments were not in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association and are contrary to the great weight of the other medical evidence. The self-insured also complains of the drawn- out process under which the dispute was resolved. There is no response from the claimant to the self-insured'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 parties stipulated that the claimant sustained a compensable injury on _____, and reached maximum medical improvement (MMI) on July 8, 1999. The claimant testified that the injury took place, while working for the self-insured as groundskeeper, when he tried to a catch a sledgehammer that was falling from where it had been placed. The claimant testified that this resulted in his right elbow popping and injuring his right elbow and shoulder.

A controversy arose as to whether the claimant's injury included carpal tunnel syndrome (CTS). The Commission sent the claimant to Dr. B for an opinion on whether CTS was related to the claimant's injury. Dr. B expressed the opinion that it was not and certified on a Report of Medical Evaluation (TWCC-69) that the claimant attained MMI on May 11, 1999, with a 10% IR. On May 28, 1999, Dr. F, the claimant's treating doctor, signed a copy of Dr. B's TWCC-69 indicating his agreement with it. Dr. B's certification was disputed and the Commission chose Dr. H to be the designated doctor. On a TWCC-69 dated August 19, 1999, Dr. H certified that the claimant attained MMI on July 8, 1999, with a 21% IR. The self-insured requested a review of the claimant's medical records by Dr. X, who generated a report dated November 9, 1999, stating he agreed with Dr. B's, rather than Dr. H's, certification. In response to a letter of clarification from the Commission, Dr. H issued a letter dated January 24, 2000, in which he stated that he was revising his IR assessment to 20%. The carrier sought an examination by Dr. Hi, who certified on a TWCC-69 dated May 9, 2000, that the claimant attained MMI on May 2, 2000, with a 12% IR. In response to a request for clarification from the Commission, Dr. H issued an amended TWCC-69 dated May 23, 2000, in which he certified that the claimant attained MMI on July 8, 1999, with a 17% IR. In an associated narrative report, Dr. H answered a number of questions propounded to him by the Commission.

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 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).

Applying this standard, we perceive no legal grounds for reversal in the present case. There certainly were differences of medical opinion among the various doctors. We do not find that these differences of medical opinion constituted the great weight of the medical evidence contrary to the opinion of the designated doctor.

The self-insured complains that seeking clarification from the designated doctor itself is a matter contrary to the 1989 Act and the rules of the Commission. It complains that obtaining a corrected opinion from the designated doctor is contrary to Section 408.125(e), which provides that if the great weight of the other medical evidence is contrary to the designated doctor's report, then the IR of one of the other doctors will be adopted. We find no basis for this. In fact, Section 408.125(f) clearly contemplates that the Commission may seek clarification from the designated doctor. The whole purpose of the designated doctor process is to obtain a valid IR from the designated doctor.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge