

APPEAL NO. 001967

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 August 1, 2000. The hearing officer determined that the impairment rating (IR) of the appellant (claimant) is two percent, as certified by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. Claimant appealed this determination on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that his IR is two percent. Claimant asserts that: (1) the hearing officer's decision was biased; (2) the designated doctor did not consider claimant's continuing problems with his shoulder; and (3) his IR should be higher because his shoulder was "torn up."

Regarding the determination of an injured employee's IR, Section 408.125(e) provides that the report of the designated doctor selected by the Commission 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. The Appeals Panel has frequently noted the important and unique position occupied by the designated doctor under the 1989 Act. See, e.g., Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have just as frequently stated that a "great weight" determination amounts to more than a mere balancing or preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 001085, decided June 26, 2000. A designated doctor's report should not be rejected "absent a substantial basis to do so." Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this case, there were only two Reports of Medical Evaluation (TWCC-69) in the record. Claimant's treating doctor certified an 11% IR, which included impairment for loss of range of motion (ROM) and crepitation. The designated doctor first certified a one percent IR, for loss of ROM. After reviewing the treating doctor's critique of her IR report, the designated doctor amended the report and changed the IR to two percent. She agreed with the treating doctor that the amount of ROM loss noted in her report would result in a two percent IR rather than a one percent IR.

As stated by the treating doctor in his critique, ROM may vary from day to day or week to week. Therefore, it is not unusual for two doctors to see different results from ROM testing. Regarding crepitation, the designated doctor stated that none was perceived. Therefore, the designated doctor was not required to include impairment for crepitation. We have reviewed the record and the designated doctor's reports and we conclude that the hearing officer's IR determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We also perceived no bias on the part of the hearing officer.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge