APPEAL NO. 002086

Following a contested case hearing (CCH) held on August 7, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the appellant (claimant) reached maximum medical improvement (MMI) on August 13, 1998, with an impairment rating (IR) of 11% and that the claimant had disability beginning on September 29, 1997, continuing through the date of the CCH. The claimant appeals, arguing that the hearing officer should have adopted the report of the second designated doctor and found that he reached MMI on March 15, 2000, with an IR of 22%. The respondent (carrier) responds that the decision of the hearing officer should be affirmed.

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 sets out the evidence in some detail and we adopt his rendition of the evidence. We will only briefly touch on the evidence germane to the appeal. It was not disputed that the claimant suffered a compensable injury on _____. The injury took place when the claimant's left hand was drawn into a machine at work, crushing his left hand and fracturing his left index finger. The claimant underwent surgery to his left index finger on the date of the injury. Dr. G, the carrier's required medical examination doctor, certified on a Report of Medical Evaluation (TWCC-69) dated May 13, 1999, that the claimant reached MMI on May 13, 1998, with a 10% IR. The claimant disputed this certification and the Texas Workers' Compensation Commission (Commission) selected Dr. B, to be the designated doctor. Dr. B certified on a TWCC-69 dated August 13, 1998, that the claimant attained MMI on August 13, 1998, with an 11% IR. The claimant contended that Dr. B's certification was incorrect. On March 15, 1999, the claimant was examined by Dr. K, at the carrier's request. Dr. K certified on a TWCC-69 dated March 18, 1999, that the claimant reached MMI on March 15, 1999, with an 11% IR. On November 11, 1999, Dr. C, sent a letter to the Commission stating his opinion that the claimant's IR should be increased to 15%. Dr. C certified on a TWCC-69 dated December 14, 1999, that the claimant was at MMI on December 14, 1999, with a 15% IR. The Commission wrote to Dr. B asking for clarification and Dr. B suggested that in light of Dr. C's letter the claimant be reevaluated. Dr. B stated that he would evaluate the claimant if the claimant could travel to Louisiana, and if that were inconvenient the Commission could choose another designated doctor closer to the claimant. On April 6, 2000, the Commission appointed Dr. Gr, as a second designated doctor. The carrier objected to the appointment of a second designated doctor. Dr. Gr certified on a TWCC-69 dated April 25, 2000, that the claimant attained MMI on March 15, 2000, with a 22% IR. Dr. C certified on a TWCC-69 dated May 24, 2000, that the claimant attained MMI on March 15, 2000, with a 22% IR.

Section 408.122(c) provides:

> If a dispute exists as to whether the employee has reached [MMI],the commission shall direct the employee to be examined by a designated doctor chosen by mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission. The designated doctor shall report to the commission. The report of the designated doctor has presumptive weight, and the commission shall base its determination of whether the employee has reached [MMI] on the report unless the great weight of the other medical evidence is to the contrary.

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 that is 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).

Here, the hearing officer adopted the report of the first designated doctor, finding as a matter of fact that the great weight of the medical evidence was not contrary to his certification. The hearing officer also found that there was not a proper reason to appoint a second designated doctor. We have also commented on the "unique" position of the designated doctor and that only in rare cases is it appropriate to appoint a second designated doctor. Appeal No. 92412, *supra*. The appointment of a second designated doctor is generally proper only when the first designated doctor is unable or unwilling to comply with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. Texas Workers' Compensation Commission Appeal No. 950068, decided April 6, 1995. The essential basis of the claimant's contention that he required reexamination was that Dr. B had only rated his left index finger and that his injury extended beyond his left index finger to other fingers. In resolving the issue of MMI and IR the hearing officer found that this was not the case. This was itself a factual determination, and, applying our standard of review, one which we find was supported by sufficient evidence. Under these circumstances, we find no error in the hearing officer adopting Dr. B's report in determining MMI and IR.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge