

## APPEAL NO. 002108

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 3, 2000. The hearing officer determined that the respondent (carrier) is entitled to reduce the appellant's (claimant) impairment income benefits (IIBs) and supplemental income benefits (SIBs) by 54% because of impairment that resulted from an earlier compensable injury. The claimant appealed on the grounds of sufficiency of the evidence, contending that he had no problems after the first surgery to his lumbar spine and had returned to work. The appeals file does not contain a response from the carrier.

### DECISION

Affirmed.

The Decision and Order rendered by the hearing officer contains a summary of the evidence and extensive discussion of prior Appeals Panel decisions involving contribution and we will only discuss briefly the relevant portions of this evidence. The claimant sustained various injuries to his lumbar spine prior to 1998; however, the information regarding these injuries is quite incomplete and the claimant's testimony at the hearing was imprecise due to his inability to remember the injuries and surgeries. In 1986 the claimant sustained an injury to his lumbar spine for which he received Texas workers' compensation benefits in the form of a monetary settlement agreement. This injury apparently involved the L5-S1 and L4-5 levels of the lumbar spine and surgery was performed at the L5-S1 level, however, surgery was also discussed for the L4-5 level.

The compensable injury of \_\_\_\_\_, resulted in a discectomy and fusion at the L4-5 level and Dr. G was appointed as designated doctor for purposes of certifying maximum medical improvement and impairment rating (IR). Dr. G assigned the claimant a 24% IR which included an 8% IR for specific disorders of the lumbar spine and a 5% IR for abnormal range of motion (ROM) in the lumbar spine due to the prior injury. Dr. G indicated in his report that the prior injury had occurred about 20 years earlier. Apparently, Dr. G was not advised that the lumbar injury had in fact occurred in 1986 or, that the 1986 injury was in addition to a 1980 injury.

Dr. C performed a peer review of the claimant's records at the carrier's request and he indicated that the claimant's prior surgery from the 1986 injury qualified for a 10% specific disorder of the lumbar spine. He did not offer an impairment due to abnormal ROM. Dr. M, who is the claimant's current treating doctor, provided a letter that the claimant did not have any residual defects, pain or limitations from a 1980 injury. Dr. M apparently was also not advised of the 1986 injury and subsequent surgery.

In her Decision and Order the hearing officer considered the cumulative impact of the 1986 and 1998 compensable injuries pursuant to Section 408.084 of the 1989 Act (which, in relevant part, was copied into the hearing officer's Decision and Order), and the

arguments addressed by both parties. 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 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The determination that the carrier is entitled to reduce IIBs and SIBs by 54% ( 13/24ths) is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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Kathleen C. Decker  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge