

APPEAL NO. 002166

Following a contested case hearing held on August 30, 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/cross-respondent's (claimant) compensable injury extended to the cervical/thoracic spine and occipital headaches and that the claimant's impairment rating (IR) was 10% as determined by the designated doctor. The claimant appealed the determination that her IR was 10%. The respondent/cross-appellant (self-insured) responded that the hearing officer was correct in determining that the IR was 10%, but appealed the determination that the injury included the cervical/thoracic spine and/or occipital headaches. The appeals file does not contain a response to the self-insured's cross-appeal from the claimant.

DECISION

We affirm the decision of the hearing officer.

The claimant sustained a compensable injury on _____, while working for the self-insured's municipal court. She testified that the injury occurred while she was filing bundles of traffic tickets. She sought treatment, complaining of swelling and soreness in her arms, a headache, shoulder pain, and neck pain. She treated with Dr. M, who executed a Report of Medical Evaluation (TWCC-69) on September 13, 1999, certifying that the claimant had reached maximum medical improvement (MMI) on September 9, 1999, with an IR of 22%. Dr. M's IR was disputed and Dr. R was selected to act as a Texas Workers' Compensation Commission-selected designated doctor.

Dr. R examined the claimant on October 22, 1999. He requested psychological testing before submitting his report. The psychological testing was performed and, on February 8, 2000, Dr. R submitted an amended TWCC-69 stating that the claimant had reached MMI on September 9, 1999 with an IR of 10%. The IR determined by Dr. R included 4% for specific disorders of the cervical spine, 1% for loss of range of motion (ROM) of the thoracic spine, and 5% for loss of ROM to the upper extremities. Dr. R determined that all upper extremity dermatomes were normal with no loss of "sensibility," abnormal sensation, or pain noted. Dr. R noted occipital headaches, but awarded no impairment. He noted that measurements of the cervical ROM was invalidated due to self-limiting and/or pain avoidance behavior.

The claimant asserts that Dr. R's report is invalid because he failed to assign impairment due to her headaches and because he did not rate the entire injury. She provided no rationale for her assertion that she should have been awarded impairment due to headaches either at the hearing or on appeal. Our review of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, reveals no scheme for rating headaches resulting from a cervical injury and we note that Dr. M, in the IR which the claimant advocates as correct, did not rate the claimant's headaches, nor did he provide any

impairment arising out of the cervical or thoracic injuries. We find no error in the decision and order regarding the IR and Dr. R's failure to award impairment for the claimant's occipital headaches.

Dr. M testified at the hearing and expressed his disagreement with Dr. R's evaluation of the claimant's IR. In particular, Dr. M expressed his belief that the claimant should have been awarded impairment for neurological deficits. In his TWCC-69, Dr. M had awarded 22% impairment for neurological deficits of multiple nerves of the upper extremities. We find no error in Dr. R's refusal to award impairment for neurological deficits where his report clearly notes that he tested for sensory loss and found none for either upper extremity.

The hearing officer could find from the record that Dr. R had rated the entire injury, including the cervical and thoracic spine. We find no error in her determination that the designated doctor's report was entitled to presumptive weight.

The self-insured filed a cross-appeal, stating that the hearing officer's determination that the injury extended to the cervical and thoracic spine and occipital headaches is against the great weight of the evidence. We disagree. There was sufficient evidence presented to the hearing officer for her to conclude that the claimant had sustained damage or harm to the cervical/thoracic spine and that those injuries and the claimant's occipital headaches were part of the compensable injury. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). 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). An appeals level body is not a fact finder, and it does not normally pass upon the credibility of the evidence or substitute its own judgement for that of the trier of fact even if the evidence could 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. 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). In

this case, we find that the decision of the hearing officer is supported by the evidence and we affirm her decision and order.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge