

APPEAL NO. 002293

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 September 14, 2000. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is three percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In her appeal, the claimant asserts error in the hearing officer's having given presumptive weight to the designated doctor's IR, essentially arguing that the designated doctor failed to properly apply the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) because he did not assign a rating under Table 49 for a specific disorder of the lumbar spine. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Because only the issue of the claimant's IR is before us on appeal, our factual recitation will be limited to those facts most germane to that issue. It is undisputed that the claimant sustained a compensable injury to her low back on _____. The claimant testified that she was injured when she lifted a case of soda bottles at work. It is undisputed that the claimant reached maximum medical improvement (MMI) on October 15, 1999, as certified by both the claimant's treating doctor and the designated doctor. Accordingly, we note that six months did not pass between the date of the claimant's injury and the date she reached MMI.

On May 10, 1999, the claimant had a lumbar MRI. The MRI report states that the test revealed degenerative changes at L5-S1 and a "small left paracentral grade III disc herniation at L5-S1." Dr. L is the claimant's treating doctor. In a July 19, 1999, report, Dr. L stated that the claimant should have a myelogram and a CT scan because her symptoms are primarily on the right side of the S1 distribution; however, the MRI demonstrated a herniation at L5-S1 primarily on the left. On July 30, 1999, the claimant underwent a lumbar myelogram and a lumbar CT scan which were both interpreted as normal. In a letter to the claimant dated August 16, 1999, Dr. L noted that the lumbar myelogram and CT scan were normal and that they did not "demonstrate any pinched nerves or significant disc herniation." In a Report of Medical Evaluation (TWCC-69) dated November 9, 1999, Dr. L certified that the claimant reached MMI on October 15, 1999, with an IR of 13%, which was comprised of five percent under Table 49(II)(B) for a specific disorder of the lumbar spine and eight percent for loss of lumbar range of motion (ROM).

Dr. L's IR was disputed and Dr. H was selected by the Commission to serve as the designated doctor. In a TWCC-69 dated January 16, 2000, Dr. H assigned a three percent IR for loss of lumbar ROM. In the narrative report accompanying his TWCC-69, Dr. H

noted that the claimant's lumbar MRI had revealed a disc bulge at L5-S1; however, he further noted that the myelogram and CT scan were normal. As such, it appears Dr. H assigned a zero percent rating in accordance with Table 49(II)(A) for an unoperated disc or soft tissue lesion with no residuals.

The claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's three percent IR, asserting that Dr. L's 13% percent rating should be adopted. The difference in the ratings of Dr. H and Dr. L is attributable to their respective determination of what rating to assign under Table 49 of the AMA Guides. Dr. L assigned a five percent rating, while Dr. H assigned a zero percent rating. The decision of what rating to assign for a specific disorder of the lumbar spine represents a difference of medical opinion. By giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e), the legislature has established a procedure where the designated doctor's exercise of professional judgment to resolve such differences is to be accepted. The opinion of Dr. L does not rise to the level of the great weight of the other medical evidence contrary to Dr. H's report. Accordingly, we cannot agree that the hearing officer erred in giving presumptive weight to Dr. H's report and, thus, determining that the claimant had an IR of three percent.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge