APPEAL NO. 002679

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 24, 2000, a hearing was held. The hearing officer decided that the appellant (claimant) had reached maximum medical improvement (MMI) on November 23, 1998 (per the stipulations of the parties), with an impairment rating (IR) of 12% as assigned by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appealed, asserting that a 5% impairment from another doctor should be added to the 12% assigned by the designated doctor, resulting in a total IR of 17%. The respondent (carrier) replied that the hearing officer's decision is correct and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury when she slipped and struck the back of her head on a steel bar. She was diagnosed with multiple levels of cervical disc problems and underwent surgery. On September 5, 1999, Dr. C, a carrier-selected doctor, certified that the claimant had reached MMI on November 23, 1998, with a 9% IR. That IR was disputed and Dr. K was appointed to act as the Commission-selected designated doctor. Dr. K examined the claimant on April 16, 1999, and assigned a 12% IR. Section 408.125(e) provides that the designated doctor's report has presumptive weight and requires that the Commission "shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary." The claimant was thereafter examined by Dr. M on January 24, 2000, and was assigned a 21% IR.

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. The hearing officer determined that the designated doctor has properly applied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association in determining the claimant's IR and that the great weight of the other medical evidence was not contrary to the designated doctor's report. The hearing officer's determinations are supported by the evidence.

We note in passing that the claimant has urged that we amend the designated doctor's report to include a portion of Dr. M's evaluation. We have consistently held that such picking and choosing is impermissible under the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 94646, decided July 5, 1994, and its progeny.

We affirm the hearing officer's decision and order.

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Kenneth A. Huchton
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Thomas A. Knapp
Appeals Judge