

APPEAL NO. 002782

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 9, 2000, a contested case hearing (CCH) was held. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 10% as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed. No response was received from the carrier.

DECISION

The hearing officer's decision is affirmed.

Section 408.125(e) provides that, 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 medical evidence is to the contrary.

The claimant sustained a compensable lumbar spine injury on _____, and had lumbar surgery for a herniated disc at L4-5 in August 1999. The parties stipulated that the claimant reached maximum medical improvement on December 8, 1999. Dr. K, the claimant's treating doctor, referred the claimant to Dr. H for an IR, and Dr. H reported in December 1999 that the claimant has an 18% IR. Dr. K agreed with the 18% IR. The carrier disputed the IR assigned by Dr. H and the Commission chose Dr. B as the designated doctor. Dr. B reported in February 2000 that the claimant has a 10% IR.

There were differences in the range of motion measurements found by Dr. H and Dr. B. The hearing officer determined that the great weight of the other medical evidence did not overcome the presumptive weight to be accorded to the report of the designated doctor and that the claimant's IR is 10%. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. We do not consider the letter from Dr. H attached to the appeal because it was not made part of the CCH record. It has also not been shown to meet all the requirements for newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 992326, decided November 29, 1999.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge