APPEAL NO. 002878

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 November 7, 2000. With respect to the single issue before her, the hearing officer determined that the great weight of the other medical evidence is contrary to the report of the designated doctor; thus, she determined that the respondent's (claimant) impairment rating (IR) is 24% in accordance with the report of the claimant's treating doctor. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the great weight of the other medical evidence is contrary to the report of the designated doctor; thus, it contends that the hearing officer should have given the designated doctor's report presumptive weight and asks that we render a new decision that the claimant's IR is 11%, as certified by the designated doctor. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury to her right hand on _____, and that she reached maximum medical improvement (MMI) on March 6, 1998. The claimant was initially diagnosed with right carpal tunnel syndrome (CTS) and dysesthesia. The claimant was later diagnosed by several doctors, including Dr. N, claimant's treating doctor, with reflex sympathetic dystrophy (RSD) in addition to right CTS. On March 6, 1998, Dr. N certified that the claimant had reached MMI and assigned a 24% IR. Dr. N did not provide a breakdown for his 24% IR; thus, it is unclear what percentage was assigned for the various components of the rating. However, in his narrative report, Dr. N noted that the claimant's range of motion (ROM) "is fairly significantly limited."

The carrier disputed Dr. N's IR and Dr. R was selected by the Texas Workers' Compensation Commission (Commission) to serve as the designated doctor. Dr. R assigned an IR of 11% for loss of sensation with or without pain and minor causalgia of the median nerve, in accordance with Table 11 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Dr. R did not assign a rating for loss of ROM based upon her observations that the claimant did not meet the validity and consistency requirements of the AMA Guides and that the claimant demonstrated submaximal effort during her ROM testing.

In response to the designated doctor's report, Dr. N stated that the claimant "has a very severe form of autonomic [RSD]" and opined that a rating for the claimant's ROM deficits should be included in her IR. Dr. N did not specify a figure that should be assigned for the claimant's ROM deficits; however, he stated that the claimant "has limitation that is severe even with activities of daily living" and further noted that the claimant's condition

had "greatly worsened" such that his "original [IR] of 24% would now probably be on the low side of the estimation." In a letter dated July 25, 1999, Dr. M, a pain management doctor to whom the claimant was referred by Dr. N, opined that the claimant had significant RSD that markedly limits her function in her right upper extremity.

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that an IR report by a Commission-appointed designated doctor shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. The Appeals Panel has stated that the great weight of the other medical evidence requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including the treating doctor's report, is accorded the special presumptive status; that the designated doctor's report should not be rejected absent a substantial basis for doing so; and that medical evidence, not lay testimony, is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 960817, decided June 6, 1996; Texas Workers' Compensation Commission Appeal No. 94835, decided August 12, 1994. Whether the great weight of other medical evidence is contrary to the opinion of the designated doctor is a factual determination for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993. The hearing officer's determination will not be disturbed unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer determined that the great weight of the other medical evidence is contrary to Dr. R's report because she did not assign a rating for loss of ROM. Dr. R noted in her report that she did not assign a rating for loss of ROM, based upon her observations that the claimant did not meet the validity and consistency requirements of the AMA Guides and that the claimant demonstrated submaximal effort during her ROM testing. We have long recognized that a designated doctor can invalidate ROM based upon such observations. Texas Workers' Compensation Commission Appeal No. 970499, decided May 1, 1997; Texas Workers' Compensation Commission Appeal No. 960311, decided March 27, 1996. The reports from Dr. N and Dr. M represent a difference in medical opinion which do not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. Accordingly, the hearing officer erred in failing to give presumptive weight to the designated doctor's report in accordance with Section 408.122(c) and 408.125(e).

The hearing officer's decision and order are reversed and a new decision rendered that the claimant's IR is 11% as certified by the designated doctor selected by the Commission.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge