APPEAL NO. 002965

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 December 5, 2000. The hearing officer determined that the appellant (claimant) had a 14% impairment rating (IR) as assessed by the designated doctor, whose opinion was not contrary to the great weight of other medical evidence.

The claimant appealed, essentially arguing that she should have an additional rating for sensory deficit, radiculopathy, and loss of hand strength, and that the treating doctor's 16% IR should be adopted. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (cervical spine) injury on August 26, 1997, and reached maximum medical improvement (MMI) on March 24, 1999. The parties also stipulated that Dr. Y is the designated doctor and it is undisputed that Dr. W is the treating doctor. It is also undisputed that the claimant has a herniated cervical disc at C4-5 and has declined surgery.

Dr. Y, in a Report of Medical Evaluation (TWCC-69) and narrative, both dated August 31, 1999, certified MMI and assessed a 14% IR based on 6% impairment from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association and 8% impairment for loss of cervical range of motion (ROM). Although Dr. Y notes the claimant's complaints of upper left extremity numbness, Dr. Y comments that "there was no motor deficit with manual testing of the muscles in the upper extremities."

Dr. W disagreed with Dr. Y's assessment and in a letter dated October 25, 1999, states that "cervical radiculopathy was not rated" and suggests that Dr. Y could "[c]onsider a Rounding-off Principal" to round his 14% IR up to 15%. Dr. W's October 25, 1999, report was sent to Dr. Y, seeking clarification. Dr. Y responded by pointing out that his Table 49, Section (II)(C) rating included "an unoperated disc with or without radiculopathy [Emphasis in the original.]" and that the "rounding-off principal" was discretionary. Dr. W, in another letter dated April 5, 2000, again disagreed with Dr. Y (because Dr. Y had allegedly not rated a sensory deficit). The April 5 letter was sent to Dr. Y for further clarification. Dr. Y responded by letter of July 17, 2000, that his (Dr. Y's) examination on August 31, 1999, and another doctor (whose report is not in evidence) "both failed to show [claimant] had any sensory or motor deficit."

Dr. W, in a TWCC-69 and narrative dated September 13, 2000, certified MMI and assessed a 16% IR based on 6% impairment from Table 49, and 10% impairment for loss of cervical ROM, and made "an adjustment" from Table 10 to arrive at a "2% U.E. Impairment loss of function due to sensory deficit, pain or discomfort" which converts to a

1% whole person impairment. Dr. O also examined the claimant and assessed only a 6% IR based on Table 49, and invalidated ROM based on inconsistent and minimal effort. A peer record review dated August 14, 2000, suggests that a 14% IR "appears to be appropriate."

The claimant, in her appeal, alleges that she "was under-represented by my ombudsman." Our review of the record does not support that statement and the assistance given by the ombudsman, after an explanation of the ombudsman assistance program by the hearing officer, was very good.

Section 408.125(e) provides that the designated doctor's report has presumptive weight and requires that the Texas Workers' Compensation Commission "shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary." In this case, the difference of opinion is whether or not the claimant had a ratable sensory deficit. The designated doctor's original report found no sensory deficit. Dr. Y's report is supported by the evidence with only Dr. W's report and testimony to the contrary.

We hold that the hearing officer's decision is supported by the evidence and is not 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, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge