

## APPEAL NO. 010083

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 6, 2000, the hearing officer resolved the sole disputed issue by determining that the respondent (carrier) is entitled to reduce the appellant's (claimant) impairment income benefits (IIBs) and supplemental income benefits (SIBs) in the amount of 50% based on the contribution to her impairment from her 1991 and 1994 compensable injuries. The claimant appeals, asserting that there is insufficient medical evidence to support the challenged determination and that the carrier is not entitled to any contribution based on the prior injuries. The carrier responds that the evidence is sufficient to support the challenged determination.

### DECISION

Affirmed.

It was undisputed that the claimant injured her cervical and lumbar spinal regions in falls at work on \_\_\_\_\_, on \_\_\_\_\_, and on \_\_\_\_\_, and that she did not undergo spinal surgery until after the 1997 injury. The parties stipulated that on \_\_\_\_\_, and on \_\_\_\_\_, the claimant sustained compensable injuries to her cervical and lumbar spinal regions; that Dr. B certified that the claimant had a 13% impairment rating (IR) for the \_\_\_\_\_, injury; that Dr. S certified that she had an 11% IR for the \_\_\_\_\_, injury; and that Dr. K, a designated doctor, certified that she had a 22% IR for the \_\_\_\_\_, injury. The claimant stressed at the hearing that the carrier is not entitled to contribution from the impairment from the 1991 and 1994 injuries because, although she was awarded ratings from Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) Table 49 for her injuries, she lost very little time from work and did not undergo surgery until after the 1997 injury. The carrier pointed to evidence that the claimant had continuous treatment for pain after the 1991 and 1994 injuries and that spinal surgery had been recommended but declined.

The hearing officer found that, considering the cumulative impact of the prior injuries, 11% of the 22% IR is due to the 1991 and 1994 injuries and that the proportion equal to the proportion of the claimant's documented impairment that resulted from the 1991 and 1994 injuries is 11% divided by 22% which equals 50%. Based on these findings, the hearing officer concluded that the carrier is entitled to a reduction from the claimant's IIBs and SIBs based on contribution from the 1991 and 1994 injuries in the amount of 50%.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We are satisfied that the hearing

officer's determination 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge