

APPEAL NO. 010218

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 992194, decided November 22, 1999, the Appeals Panel reversed the hearing officer's decision that the appellant (claimant) had a 12% impairment rating (IR) as determined by the first designated doctor chosen by the Texas Workers' Compensation Commission (Commission), Dr. D, and remanded the case to the hearing officer to determine whether the cervical spine was part of the compensable injury and to make further inquiry of Dr. D or appoint a second designated doctor. The parties agreed that a second designated doctor should be appointed and the Commission chose Dr. P as the second designated doctor. Dr. P assigned the claimant a 32% IR, which included 19% for impairment of the upper extremities and 16% for impairment of the cervical spine (12% for loss of range of motion and 4% for a specific disorder). The hearing officer determined in his decision on remand that the claimant's cervical spine was not part of the compensable injury of _____, and that the claimant has a 19% IR as a result of the compensable injury of _____. The claimant appealed, asserting that her IR is 29%. The respondent (carrier) responded, contending that the claimant's IR should be 14% as determined by Dr. W, a referral doctor. The carrier's response was timely filed as a response but was not timely filed as an appeal and thus that portion of its response in which it asserts that a 14% IR should be adopted is not considered.

DECISION

The hearing officer's decision is affirmed.

There is much conflicting evidence regarding the claimant's IR. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer did not err in determining that the claimant's IR for her compensable injury to her upper extremities is 19%. Texas Workers' Compensation Commission Appeal No. 941732, decided January 31, 1995. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The decision cited by the claimant, Texas Workers' Compensation Commission Appeal No. 990530, decided April 26, 1999, does not compel a reversal of the hearing officer's decision because in that case the disputed impairment that was assigned for the thoracic spine was not a part of the IR that was adopted and in the instant case the second designated doctor gave conflicting statements regarding claimant's cervical impairment.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge