

APPEAL NO. 010233

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 September 14, 2000, the record closed on January 18, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not have disability as a result of her April 17, 1998, compensable injury from August 8, 1998, to December 4, 1998, and that the claimant's impairment rating (IR) is six percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in his amended report. In her appeal, the claimant asserts error in each of those determinations. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have disability as a result of her compensable injury from August 8 to December 4, 1998. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. There was conflicting evidence on the disability issue. The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies against the claimant and in determining that the claimant did not sustain her burden of proving that she had disability for the period at issue. As the fact finder, the hearing officer was free to discount the claimant's evidence on the disability issue, including the off-work slips from the claimant's treating doctor, and that is what she did here. Our review of the record does not demonstrate that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer also did not err in giving presumptive weight to the designated doctor's six percent IR under Sections 408.122(c) and 408.125(e). The designated doctor certified a six percent IR after he reexamined the claimant in response to two clarification letters from the hearing officer to the designated doctor. The difference between the designated doctor's certification and that of the claimant's treating doctor is attributable to differences in medical opinion as to what rating to assign for loss of range of motion (ROM) in the cervical spine and whether to assign a rating for a specific disorder of the cervical spine. The treating doctor's opinion on those matters simply does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e) and in determining that the claimant's IR is six percent. The claimant also contends that the Commission-selected designated doctor's opinion was "tainted and did not give the slightest appearance of

impartiality” based on the fact that two letters of clarification had to be sent by the hearing officer to the designated doctor before he agreed to retest ROM rather than invalidating only a portion of the claimant’s ROM due to lack of effort as the designated doctor had done in his initial report. After carefully reviewing the record, we find no evidence to support the assertion that the designated doctor acted with anything other than impartiality in assessing the claimant’s IR. On the contrary, it appears that the designated doctor responded to the hearing officer’s concerns by reexamining the claimant and retesting her ROM in order to ensure that the appropriate IR would be assigned. As such, we find no merit in the assertion that a second designated doctor should have been appointed in this instance.

The hearing officer’s decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O’Neill
Appeals Judge