APPEAL NO. 010436

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 January 30, 2001. The hearing officer gave presumptive weight to the first report of the designated doctor on the disputed issue of impairment rating (IR). The appellant (claimant) has appealed the IR from the first designated doctor report, taking the position that the amended designated doctor report, which includes valid range of motion (ROM) measurements, is the correct IR for her compensable injury. The respondent (self-insured) has filed a response, urging that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant was examined by Dr. C, the designated doctor appointed by the Texas Workers' Compensation Commission (Commission), on three occasions. On November 16, 1999, Dr. C found that the claimant had not reached maximum medical improvement (MMI). On May 9, 2000, Dr. C again examined the claimant. ROM testing was determined to be invalid and a 12% IR was assigned. The claimant's treating doctor, Dr. B, opined in his June 17, 2000, letter that the claimant deserved a rating for ROM. Dr. C was asked to comment. He explained why he had invalidated the ROM measurements and did not change his IR. The claimant persisted in her objections to the IR from the designated doctor and was sent back to Dr. C for reexamination on November 2, 2000. This time the ROM testing was valid, but Dr. C noted that the claimant "was 4 months pregnant at the time of the examination, which may or may not have any bearing to the lumbar [ROM] measurements." Dr. C certified an IR of 18% after the November examination. The carrier had objected to the reexamination taking place and objected to the amendment of the IR.

The report of a Commission-appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). A certification of MMI and IR by a designated doctor will be accepted unless the great weight of the other medical evidence is to the contrary. When a report is amended, the latest report is not automatically the one which should be given presumptive weight. *See* Texas Workers' Compensation Commission Appeal No. 94155, decided March 30, 1994. The issues of reasonable time and proper purpose must be considered, as well as significant changes in the condition of the claimant.

In this case, the hearing officer could find from the evidence that the change of condition of the claimant (the claimant's pregnancy) was such that it was inappropriate to give presumptive weight to the amended report. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-

Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not upset the challenged factual findings of a hearing officer unless they are 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). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge