

APPEAL NO. 010765

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 March 7, 2001. The hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury did not extend to and include injuries to both shoulders and elbows, and that the correct impairment rating (IR) is 19%. The appellant/cross-respondent (carrier) has appealed the hearing officer's determination on IR, alleging that the designated doctor, Dr. B, incorrectly calculated that IR. The claimant appealed the extent-of-injury determination and the IR of 19%, arguing that the IR should be 23%. The carrier responded to the claimant's appeal, taking the position that the extent-of-injury determination was correct and reiterating its argument that the IR was incorrectly determined by the designated doctor. The claimant responded to the carrier's appeal, urging that the 19% IR is supported by sufficient evidence.

DECISION

Affirmed.

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. There was evidence from which the hearing officer could determine that the compensable injury did not extend to and include the shoulders and elbows. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer determined that the medical evidence from the carrier-requested independent medical examinations conducted by Dr. S and the peer reviews conducted by Dr. P and Dr. Y did not constitute the great weight of medical evidence contrary to the designated doctor's opinion. The report of the Texas Workers' Compensation Commission's designated doctor is given presumptive weight in the determination of IR, unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra; Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge