APPEAL NO. 010843
FILED JUNE 5, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 6, 2001. With respect to the issue before her, the hearing officer determined that the appellant (claimant) has an impairment rating (IR) of 14%. On appeal, the claimant expresses disagreement with this determination and requests that the hearing officer's decision be reversed and a new decision rendered that his IR is 21%. The appeals file contains no response from the respondent (self-insured).

DECISION

Affirmed.

At issue in this case is whether the hearing officer erred in giving presumptive weight to the IR assigned by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. It is undisputed that the claimant sustained a compensable injury on _____, and that he reached maximum medical improvement (MMI) on May 20, 2000. Upon certifying that the claimant had reached MMI, the claimant's treating doctor, Dr. R, assigned a 20% IR--9% for specific disorders of the spine and 12% for range of motion (ROM). This rating was disputed by the self-insured and, consequently, the claimant was examined by a Commission-selected designated doctor, Dr. M. Dr. M assigned a 14% IR; 9% for specific disorders of the spine and 5% for ROM. Subsequently, Dr. R submitted a letter, questioning the rating assigned by Dr. M. Dr. R attributed the lower rating assigned by Dr. M to the fact that Dr. M did not rate the patchy sensory loss in the left hand and forearm. Dr. M then, in two separate letters, clarified that he did not rate the sensory loss as it was a non-dermatomal distribution and confirmed his original 14% IR assignment. The hearing officer determined that, although the two doctors had differing opinions regarding the claimant's IR, this difference was not sufficient to overcome the presumption in favor of the designated doctor. The hearing officer found that the claimant's IR is 14%.

Section 408.125(e) provides:

> If the designated doctor is chosen by the commission, the report of the designated doctor shall have presumptive weight, and the commission shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the [IR] contained in the report of the designated doctor chosen by the commission, the commission shall adopt the [IR] of one of the other doctors.

We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the

evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Sections 408.122(c) and 408.125(e) provide that where there is a dispute as to the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. In this case, we are satisfied that the hearing officer's determinations are sufficiently supported by the evidence. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Accordingly, we cannot agree that the hearing officer erred in determining that the claimant has a 14% IR.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge