

APPEAL NO. 011033
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 was held on April 11, 2001. The hearing officer resolved the sole issue by determining that the appellant's (claimant) correct impairment rating (IR) for his compensable injury is 21% as certified by the designated doctor. The claimant appealed the hearing officer's decision, contending that his IR is incorrect. The respondent (carrier) urges affirmance.

DECISION

The decision of the hearing officer is affirmed, as reformed.

We note at the outset that although the hearing officer found that venue was proper in the (city 1) field office of the Texas Workers' Compensation Commission (Commission), he concluded that venue was proper in the (city 2) field office. We reform Conclusion of Law No. 2 to conform to Finding of Fact No. 1C.

The claimant asserts on appeal that the hearing officer erred in finding the IR to be 21% as assessed by the designated doctor, Dr. D. The claimant contends that the designated doctor did not review an EMG report from Dr. S which showed a nerve root injury. However, the EMG was performed four months after the designated doctor assessed a 21% IR. On cross-examination, the treating doctor, Dr. H, testified that the designated doctor had reviewed a previous EMG report from Dr. B which contained essentially the same medical information as Dr. S's EMG report regarding the nerve root injury. The hearing officer found the treating doctor's testimony and his reports in evidence unpersuasive.

The hearing officer did not err in determining that the claimant's IR is 21% as assessed by the designated doctor. Section 408.125(e) provides that the report of the designated doctor shall have presumptive weight, and the Commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. The hearing officer found that the designated doctor's IR determination is not contrary to the great weight of the other medical evidence.

The hearing officer is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer, as the finder of fact, to resolve the inconsistencies and conflicts in the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find it so in this case. 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).

The hearing officer's decision is affirmed, as reformed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge