APPEAL NO. 011157
FILED JULY 11, 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 May 1, 2001. With regard to the issues before her, the hearing officer determined that the respondent (claimant herein) has an impairment rating (IR) of 16% and is not entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier herein) files a request for review challenging the hearing officer's resolution of the IR issue. The carrier argues that the designated doctor was incorrect and that the hearing officer therefore relied in error on the designated doctor's report in determining the claimant's IR. The carrier seeks to appeal one of the hearing officer's findings of fact concerning SIBs. There is no response from the claimant to the carrier's request for review.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that the claimant suffered a compensable injury on _____, and reached maximum medical improvement on February 8, 2000. The claimant worked as a jockey and was thrown from a horse, injuring his neck, right elbow, and right shoulder. Dr. P, the claimant's treating doctor, certified in a Report of Medical Evaluation (TWCC-69) that the claimant has a 17% IR. Dr. L, the designated doctor selected by the Texas Workers' Compensation Commission (Commission), certified on a TWCC-69 dated March 20, 2000, that the claimant had a 16% IR. Dr. Y, a doctor who did a peer review of the medical records for the carrier, assessed a 10% IR. Dr. L wrote two letters–one on June 5, 2000, and another on October 27, 2000–responding to Dr. Y's criticisms of his IR assessment and stating that his opinion as to the claimant's IR remained unchanged.

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. Here, the hearing officer found that the great weight of the medical evidence was not contrary to the opinion of the designated doctor. 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). 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). Applying this standard, we find no error in the hearing officer's finding that the great weight of the other medical evidence was not contrary to the opinion of the designated doctor. Nor do we find any error in the hearing officer giving presumptive weight to the designated doctor's 16% IR.

The carrier challenges one of the factual findings that the hearing officer made regarding SIBs. The carrier agrees with the hearing officer's determination that the claimant is not entitled to SIBs and neither party has appealed this determination. The carrier is not aggrieved by the hearing officer's finding that it challenges, and we find no need to address the matter further.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge