

APPEAL NO. 011238
FILED JULY 12, 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 8, 2001. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 2% as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed and the respondent (self-insured) responded.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant has a 2% IR as certified by the designated doctor chosen by the Commission. The parties stipulated that the claimant sustained a compensable injury on _____, and that he reached maximum medical improvement on September 25, 2000. The IR report of the designated doctor chosen by the Commission has presumptive weight and the Commission shall base its determination of the IR on that report unless the great weight of the other medical evidence is to the contrary. Section 408.125(e).

The claimant testified that he sustained his work-related injury when the bus brakes locked up and he was thrown forward. The claimant's treating doctor certified that the claimant has a 21% IR based wholly on loss of range of motion (ROM). The designated doctor examined the claimant in November 2000 and certified that the claimant has a 2% IR based on impairment of the ulnar nerve of the left arm, for which the claimant had surgery. The claimant's appeal centers on the designated doctor's failure to assign him any impairment for loss of ROM of the cervical, thoracic, and lumbar spine. The designated doctor noted in his report that, in clinical observation, the claimant had very good ROM of the cervical, thoracic, and lumbar spine, with no sign of distress, but that as soon as he began to perform measurements, the claimant made minimal attempt at motion and therefore it was invalidated. The designated doctor also wrote that the claimant does not have any residual ratable impairment associated with the soft tissue injury sustained to his neck, left shoulder, left thumb, thoracic spine, or lumbar spine. In Texas Workers' Compensation Commission Appeal No. 002006, decided October 6, 2000, it was noted that in numerous decisions the Appeals Panel has held that a designated doctor may invalidate ROM tests because of suboptimal effort. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge