APPEAL NO. 011350
FILED JULY 25, 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 May 30, 2001. With regard to the only issue before her, the hearing officer determined that the appellant's (claimant) impairment rating (IR) was 7% as assessed by the designated doctor, whose report was not contrary to the great weight of other medical evidence.

The claimant appeals, contending that the designated doctor had not "physically" examined him, that the designated doctor did not have all the medical reports, that an MRI (which had been excluded) showed a herniated disc, and that his IR was 20% as assessed by his treating doctor. The claimant also contends that certain exhibits, which had been excluded because they had not been timely exchanged, had been exchanged "@ previous BRC's [benefit review conference]." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a low back injury on _____, trying to lift "the sweeper head" of his truck. The parties stipulated that the claimant reached maximum medical improvement (MMI) on April 6, 2000. The claimant's treating doctor, Dr. W, on a Report of Medical Evaluation (TWCC-69) and narrative dated February 21, 2000, certified MMI and assessed a 20% IR based on 18% impairment for loss of "anterior" and "posterior" flexion range of motion (ROM) and right and left lateral flexion, plus 2% impairment for neurological deficit. Dr. W made no rating for a specific disorder from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

The carrier disputed Dr. W's rating and Dr. T was appointed as the Texas Workers' Compensation Commission (Commission)-selected designated doctor. In a TWCC-69 and narrative dated April 6, 2000, Dr. T certified MMI with a 7% IR. Dr. T calculated the IR by assessing a 5% impairment from Table 49, Section (II)(B) and 2% impairment for lateral loss of ROM. No impairment was assessed for sensory or neurological deficit. Dr. W, in an undated note, disputes Dr. T's ROM figures and argues that an impairment should have been given "for numbness and weakness in the right leg." Dr. W's note was sent to Dr. T by the Commission with a request for clarification. Dr. T replied that the differences in ROM measurements "simply means that the findings were different at two different examinations" and declined to change his IR. The Commission sent a second request for clarification to Dr. T asking if Dr. T "had the MRI films for review and whether [Dr. T] would consider re-testing the [ROM] . . . ." Dr. T responded, stating:

> Concerning having or not having the MRI films in this case certainly bears no difference. I trust the interpretation of the MRI films by the radiologist, who is the expert on reading these films. The MRI showed only a 2 mm

protrusion as well as disk dessication between L4 and L5, with no evidence of disk herniation.

I see no reason to change my [IR] of 7% and therefore I see no reason to make any changes on my form TWCC-69 dated 04/06/2000.

All of the claimant's arguments that he had not been examined by Dr. T were made to the hearing officer at the CCH. We would further note that the MRI, which the hearing officer excluded (among other exhibits) on the basis of lack of timely exchange, was thoroughly discussed at the CCH, and that Dr. W apparently did not rely on the MRI because Dr. W made no rating for a specific spinal disorder.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). Whether or not Dr. T actually examined the claimant and conducted ROM testing and whether the claimant's exhibits were exchanged at a prior BRC were all factual determinations within the province of the hearing officer to resolve. The hearing officer specifically found that Dr. T examined the claimant in accordance with the AMA Guides, and that finding is supported by Dr. T's report. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them 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 decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge