

APPEAL NO. 011372
FILED AUGUST 1, 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 30, 2001. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 22%, as certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor. The appellant (carrier) has appealed, arguing that the great weight of the other medical evidence to the contrary overcomes the presumptive weight of the report of the designated doctor. The claimant did not respond to the appeal.

DECISION

Affirmed.

The hearing officer determined that the presumptive weight afforded the opinion of the Commission-selected designated doctor was not overcome by the great weight of the other medical evidence. Section 408.125(e). The hearing officer had the certification of IR by the designated doctor, the report of the peer review doctor, and a prior report of the carrier's required medical examination doctor in evidence. She also had the clarification letter prepared by the designated doctor, in which the designated doctor took into consideration the comments of the peer review doctor, and then reaffirmed his 22% IR. In Texas Workers' Compensation Commission Appeal No. 951921, decided December 11, 1995, we stated that the decision by a doctor to include or not to include a rating for a certain condition represents a medical difference of opinion as to whether the claimant's compensable injury resulted in a permanent impairment to the body part being rated and that the 1989 Act gives presumptive weight to the designated doctor's reconciliation of such a difference.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust, and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge