

APPEAL NO. 011541
FILED AUGUST 09, 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 June 12, 2001. in _____, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) has an impairment rating (IR) of nine percent as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed, contending that her IR should be 20% as certified by her treating doctor. The respondent (carrier) responded, requesting affirmance.

DECISION

The hearing officer's decision and order are affirmed.

The hearing officer did not err in determining that the claimant has a nine percent IR as certified by the designated doctor chosen by the Commission. There is no dispute that the claimant reached maximum medical improvement (MMI) on March 3, 2000, which is the date of MMI certified by both the treating doctor and the designated doctor. Section 408.125(e) provides that 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, and that, 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. The difference in the IR certified by the designated doctor and the IR certified by the treating doctor is the amount of impairment that was assigned for loss of range of motion of the lumbar spine. The hearing officer considered the conflicting evidence and found that the other medical evidence is not sufficient to overcome the presumptive weight afforded to the findings of the designated doctor, and concluded that the claimant has an IR of nine percent as certified by the designated doctor. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder 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 on the IR issue 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.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge