APPEAL NO. 011547
FILED AUGUST 14, 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 7, 2001. The hearing officer resolved the sole disputed issue by determining that the appellant's (claimant) impairment rating (IR) is 15%, as assigned by the designated doctor. The claimant appealed the hearing officer's determination and asserts that his correct IR is 21%, as assigned by his treating doctor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's IR is 15%. Section 408.125(e) provides that if the designated doctor is chosen by the Texas Workers' Compensation Commission (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. The parties stipulated that the claimant reached maximum medical improvement on April 13, 2000.

The hearing officer determined that the Commission-appointed designated doctor, Dr. D, correctly assigned a 15% IR in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(j) (Rule 130.6(j)). We note that the treating physician, Dr. P, assigned a 21% IR in accordance with the Guides to the Evaluation of Permanent Impairment, fourth edition, fourth printing, dated October 1999, published by the American Medical Association, which is not the version statutorily mandated for use in determining IR at this time.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. Section 410.165(a). 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will reverse the factual determinations of a hearing officer only if those determinations are 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, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge