APPEAL NO. 020750
FILED MAY 16, 2002

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 March 13, 2002. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) has an impairment rating (IR) of 18%. The appellant (self-insured) appealed, contending that the hearing officer erred in not adopting the 14% IR assigned by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). No response was received from the claimant.

DECISION

The hearing officer's decision is affirmed.

It is undisputed that the claimant sustained a compensable back injury. According to the benefit review conference report, the parties agreed that the claimant reached maximum medical improvement on March 26, 1999. The claimant underwent two lumbar spine fusion surgeries as a result of his injury.

For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, 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.

We have held that it is not just equally balancing evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. In addition, in Texas Workers' Compensation Commission Appeal No. 950166, decided March 14, 1995, we noted that a difference in medical opinion is not a sufficient basis to discard a designated doctor's report. We also pointed out in that decision that whether the great weight of the other medical evidence is contrary to the designated doctor's report is normally a question of fact for the hearing officer to decide. However, we have held that if a hearing officer finds that the great weight of the other medical evidence is contrary to the report of the designated doctor, then the hearing officer should explain how the other medical evidence greatly outweighs the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 941482, decided December 13, 1994.

In the instant case, a referral doctor examined the claimant and determined that the claimant has an 18% IR. The treating doctor agreed with the 18% IR. Another doctor who examined the claimant in connection with one of his surgeries agreed with the 18% IR. The doctor who examined the claimant at the request of the carrier agreed that the claimant has at least an 18% IR because he reported that the claimant has a 25% IR. Of the five doctors who have examined the claimant and expressed an opinion on the claimant's IR, only the designated doctor reported that the claimant has less than an 18% IR; he assigned the claimant a 14% IR. The hearing officer found that the 14% IR assigned by the designated doctor was overcome by the great weight of the contrary medical evidence and determined that the claimant has an 18% IR in accordance with the report of the referral doctor. The hearing officer explained her reasoning in her decision. 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. We note in response to the appeal that the first operative report diagnoses, among other things, spinal stenosis, and that later reports note failed back syndrome and instability of the lumbar spine. We conclude that the hearing officer's decision is supported by sufficient evidence and that it 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.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Robert W. Potts
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Roy L. Warren
Appeals Judge