

APPEAL NO. 020920
FILED MAY 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 5, 2002, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 13% based on the report of the designated doctor. The claimant appeals, contending that the Appeals Panel should reverse the hearing officer's determination and adopt the 18% IR assigned by his treating doctor. The claimant contends that the designated doctor erred in failing to follow the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) in that he did not assign a rating for the claimant's neurological deficit from his cervical radiculopathy; he did not discontinue the examination when the claimant began to experience acute spasms; and he did not assign a rating for cervical left lateral flexion despite valid measurements. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged findings.

DECISION

Affirmed, as reformed.

At the outset, we note the apparent typographical error in Finding of Fact. No. 2 which identifies Dr. J as the designated doctor. The parties stipulated that the designated doctor was Dr. W, and we reform that finding accordingly.

It was not disputed that the claimant sustained a compensable injury on _____, underwent cervical spine surgery on October 12, 2000, and reached maximum medical improvement on July 19, 2001. As for the resolution of the sole disputed issue, the claimant's IR, the report of the designated doctor is entitled to presumptive weight and the Texas Workers' Compensation Commission shall base the IR on such report unless it is contrary to the great weight of the other medical evidence. Section 408.125(e). According to Dr. S's testimony, the designated doctor should have assigned a rating for the claimant's cervical radiculopathy, which was revealed by nerve conduction studies; should have assigned a rating for the claimant's left lateral cervical flexion based on the claimant's measurements; and should have stopped the range of motion examination and retested the claimant at another time when he began having cramping. Dr. S ultimately agreed that he could not pinpoint the location of his contentions in the AMA Guides and that he and the designated doctor could have a difference of professional opinion. The designated doctor's narrative report states that the only cervical motions meeting the validity criteria were flexion and extension, for which the claimant was assigned a 6% rating, and that based on the claimant's inappropriate pain behavior during palpation and his non-anatomical responses and complaints, his sensory and motor findings cannot be rated.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). 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. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge