

APPEAL NO. 021200
FILED JUNE 26, 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 April 17, 2002. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 7% as assigned by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed, and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The parties stipulated that the claimant reached maximum medical improvement on October 13, 2000, per the report of the designated doctor. A referral doctor assigned the claimant a 17% IR. The carrier's required medical examination doctor assigned the claimant a 6% IR. The designated doctor assigned the claimant a 7% IR. The designated doctor explained in a letter of clarification that the reason he did not assign the claimant any impairment for abnormal range of motion (ROM) was because the claimant failed to give a valid effort during the examination and that he invalidated the measurements. The Appeals Panel has held that a designated doctor may invalidate ROM based on observations of suboptimal effort on the part of the claimant in testing. Texas Workers' Compensation Commission Appeal No. 001410, decided August 1, 2000, and decisions cited therein.

The IR report of the designated doctor chosen by the Commission has presumptive weight, and the Commission must base the IR on that report unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). The hearing officer found that the designated doctor's report was not overcome by the great weight of the other medical evidence and concluded that the claimant's IR is 7% as assigned 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. 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 **L M INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**C T CORPORATION
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge