APPEAL NO. 032542
FILED NOVEMBER 14, 2003

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 5, 2003. The record was held open to allow additional clarification from the designated doctor and time for the parties to respond to such clarification. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) has a 10% impairment rating (IR). The claimant appealed, arguing that the designated doctor did not complete her examination properly, and contending that the hearing officer erred in giving presumptive weight to the designated doctor's report and asking that we adopt a 17% IR by her prior treating doctor. The claimant argues that both her current treating doctor and the respondent (self-insured)-selected doctor agreed with the assessment of a 17% IR. The self-insured responded, urging affirmance.

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable left shoulder injury on _____, and that the date of the claimant's maximum medical improvement (MMI) was October 23, 2002. On January 6, 2003, the Texas Workers' Compensation Commission's (Commission)-selected designated doctor, Dr. S, examined the claimant and subsequently issued his Report of Medical Evaluation (TWCC-69), wherein Dr. S assigned the claimant a 10% IR based on loss of range of motion (ROM) of the left shoulder.

We note that because Dr. H, the self-insured's required medical examination doctor, performed the first certifying examination in this case after October 15, 2001, improperly used the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides, third edition) to determine the claimant's IR. Neither party complains about Dr. H's use of the wrong version of the AMA Guides and we perceive no error in that the record reflects that in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(2)(B)(i) (Rule 130.1(c)(2)(B)(i)), the designated doctor properly used the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides, fourth edition) to calculate the claimant's IR. We note that the claimant's treating doctor also improperly used the AMA Guides, third edition to determine the claimant's IR.

For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, Sections 408.122(c) and 408.125(e) provide that the designated doctor's report has presumptive weight, and the Commission shall base its determinations of MMI and IR on that report unless the great weight of the other medical

evidence is to the contrary. Rule 130.6(i) provides that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight as it is part of the doctor's opinion.

The hearing officer found that the presumptive weight accorded to Dr. S' assessment of the claimant's whole body IR was not overcome by the great weight of contrary medical evidence. The hearing officer noted that Dr. S indicated that he properly measured the claimant's ROM and, on the day of his examination, that Dr. S did not see sufficient indications of reflex sympathetic dystrophy to support a diagnosis. Further, the hearing officer noted that the evidence reflected that the second stellate ganglion block did not produce Horner's syndrome, which would indicate that the claimed condition was not permanent.

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. Although there is conflicting evidence in this case, we conclude that 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. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge