APPEAL NO. 033214
FILED FEBRUARY 3, 2004

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A hearing was initially held on June 10, 2003. The hearing officer determined that the respondent's (claimant) impairment rating (IR) was 22% as certified by Dr. J, the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In Texas Workers' Compensation Commission Appeal No. 031865, decided September 5, 2003, we remanded the case for the hearing officer to seek additional clarification from the designated doctor regarding the claimant's cervical spine IR; specifically, whether the claimant's cervical condition was one listed in Table 70 of 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) and, if so, which of the Diagnosis-Related Estimates (DRE) categories would be appropriate. The hearing officer requested the clarification and Dr. J reexamined the claimant; determined that the claimant's cervical condition warranted placement into DRE Category III; and assigned a 23% IR, which was comprised of 15% for the cervical spine and 9% for the right upper extremity. The hearing officer found that Dr. J's IR was entitled to presumptive weight and concluded that the claimant's IR is 23%. The appellant (carrier) asserts on appeal that Dr. J's 23% IR is incorrect because, at the time of the reexamination, there was no evidence of radiculopathy as required for placement into DRE Category III. In her response, the claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The carrier specifically argues on appeal that because there was no evidence of radiculopathy at the time of Dr. J's reexamination of the claimant, the placement into DRE Category III was incorrect and, consequently, Dr. J's IR cannot be adopted. However, our review of the record indicates that Dr. J noted in his report that during the reexamination, which was confined to the cervical spine, the claimant exhibited loss of relevant reflexes in the upper extremities, which Dr J defined as "neurological compromise." Page 104 of chapter 3 of the AMA Guides provides, in part, that placement into DRE Cervicothoracic Category III is warranted where the patient has significant signs of radiculopathy, such as loss of relevant reflexes. Accordingly, we cannot agree that Dr. J's placement of the claimant into DRE Category III was incorrect.

Sections 408.125(e) provides that for injuries that occurred prior to June 17, 2001, where there is a dispute as to the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for

clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. *See also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing officer's decision is 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). Accordingly, we cannot agree that the hearing officer erred in determining that the claimant's IR is 23%.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEM**
**350 NORTH ST. PAUL STREET**
**DALLAS, TEXAS 75201**.

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Chris Cowan
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Gary L. Kilgore
Appeals Judge