APPEAL NO. 950150

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 4, 1995, in (city), Texas, with (hearing officer)l presiding as hearing officer. Addressing the single issue, he determined that the appellant's (claimant herein) correct impairment rating (IR) was two percent as determined by a Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant argues that her examination by the designated doctor was not thorough and should not overcome the 16% IR assigned by her treating doctor. The respondent (self-insured or carrier herein) urges affirmance contending that the hearing officer properly accorded presumptive weight to the report of the designated doctor.

DECISION

We affirm.

It was not disputed that the claimant sustained a compensable back injury on (date of injury), as a result of a slip and fall accident at work. On December 27, 1993, (Dr. P), her treating doctor, completed a Report of Medical Evaluation (TWCC-69) in which he certified the claimant reached MMI on that date and had a 16% IR. The components of this rating included five percent for a specific disorder of the spine (unoperated medical injury with recurrent muscle spasm) and 12% for loss of range of motion (ROM) of the lumbar spine. He found no neurologic impairment. The reported medical diagnosis was recurrent lumbar sprain. In a progress note of January 5, 1994, Dr. P confirmed this certification.

The carrier timely disputed Dr. P's certification of MMI and IR and the Commission on February 2, 1994, appointed (Dr. K) designated doctor to determine both MMI and IR. On February 25, 1994, Dr. K completed a TWCC-69 in which he found the claimant reached MMI on December 27, 1993, and assigned a two percent IR based solely on ROM deficit. He found no neurological impairment and declined to give a rating to the lumbar spine even though there was evidence of annular bulging explaining:

> I feel that this patient is significantly obese which, can, in itself, cause annular bulging. Therefore, in my opinion, this is equal to 0% permanent impairment of the whole person.

His diagnosis of the claimant's medical condition was myofascial pain syndrome, exogenous obesity, disc degeneration with annular bulge, but no evidence of herniation, and no evidence of radiculopathy.

In response to a specific inquiry from a benefit review officer as to why he did not give a rating for the annular bulging, Dr. K on April 28, 1994, wrote:

With regard to the annular bulging, on reviewing the records, this patient has annular bulging to the thoracic and lumbar regions which is very minimal and which, after careful review of the history and patient's symptoms, it was felt that this was a pre-existing condition which was not aggravated by injury.

I feel that her condition is that of a soft tissue injury for which I have rendered an [IR] and I stand by that.

If you would like further information, I could provide several articles which address annular bulging in overweight patients in her age group. This is present in most patients.

In summary, I feel that the annular bulging is clearly a pre-existing condition.

The claimant testified at the hearing, and restated her position on appeal, that she agreed with Dr. P's 16% IR because of the "multitude of tests given" and because he was a spine specialist. She did not consider Dr. K's examination to be thorough because he saw her only once for ten minutes. She believed he was not aware of how she was injured nor did she think he reviewed all her records. She also contends that Dr. K was required to perform additional tests before reaching conclusions different from Dr. P's.

Based on this evidence, the hearing officer determined that the report of Dr. K was not contrary to the great weight of the other medical evidence and that the claimant reached MMI (a matter not in dispute) on December 27, 1993, with a two percent IR.

In rendering an IR, a doctor is to provide a rating only for the compensable injury and, in so doing, the doctor must determine in his or her medical judgment what the compensable injury is, though, of course, any dispute about the nature or extent of the compensable injury is resolved by the Commission. *See* Texas Workers' Compensation Commission Appeal No. 931098, decided January 18, 1994. Pursuant to Section 408.125(e), the report of a designated doctor selected by the Commission has presumptive wight and the determination of IR shall be based on that report unless the great weight of the other medical evidence is to the contrary. "Great weight" means more than an equal balancing or even a preponderance of the medical evidence, and whether the great weight of the other medical evidence is contrary to the report of the designated doctor is a factual determination to be made by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We have also held that only other medical evidence, not lay opinion, can constitute the great weight necessary to overcome the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92395, decided September 16, 1992. The 1989 Act does not require a particular degree of specialization on the part of a designated doctor, but the relative expertise of the examining doctors may be considered by the

hearing officer in determining whether the great weight of the other medical evidence is contrary to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 93062, decided March 1, 1993.

Dr. K considered the bulging in this case to be a deviation from normal, not produced by and not part of the compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 94570, decided June 15, 1994. Therefore, he did not rate it. The claimant's opinion that Dr. K's examination was not sufficiently thorough, though obviously sincere, is not medical evidence that could impeach Dr. K's findings. We have frequently noted that the time a treating doctor spends with a claimant is invariably more than the time spent with the designated doctor. This is so because the designated doctor does not provide a course of treatment, but is appointed to determine a claimant's medical condition as of the date of examination. As we said in Texas Workers' Compensation Commission Appeal No. 94555, decided June 10, 1994, "[t]his common fact does not in itself transform the report of the treating doctor into the great weight of the other medical evidence." The claimant also contends that Dr. K was required to perform more tests before certifying IR because he disagreed with Dr. K. The 1989 Act contains no such requirements.

The issue of the claimant's correct IR was a question of fact. 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 the evidence. It was for the hearing officer to resolve the inconsistencies and conflicts in the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Having reviewed that evidence, we conclude that the hearing officer correctly accorded presumptive weight to the report of Dr. K, the designated doctor, and that the great weight of the other medical evidence was not contrary to this report. We will not substitute our judgment for that of the hearing officer where, as here, his findings and conclusions are supported by sufficient evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge