

APPEAL NO. 950272

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 November 23, 1994, and January 23, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. Addressing the sole appealed issue, she determined that the appellant's (claimant herein) impairment rating (IR) was zero percent as certified by (Dr. O), a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals contending that due to "inconsistencies" in Dr. O's report, the decision and order of the hearing officer should be reversed. The respondent (carrier herein) replies that the decision and order are correct and should be affirmed.

DECISION

We affirm.

The claimant sustained a compensable injury on (date of injury). The parties agreed that Dr. O was a designated doctor selected by the Commission. On August 31, 1994, Dr. O completed a Report of Medical Evaluation (TWCC-69) in which he certified that the claimant reached maximum medical improvement (MMI) on August 31, 1994,¹ and assigned a zero percent IR. The hearing officer accorded this report presumptive validity and found that the great weight of the other medical evidence was not to the contrary.

In his appeal, claimant points to what he calls "blatant inconsistent statements" which put into serious question the validity of this report. Specifically, claimant refers to two cervical range of motion (ROM) forms (Figure 83a of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides)) one of which records cervical ROM testing on August 31, 1994, and assigns a four percent rating, and the other on the same date assigns a six percent rating for ROM deficit. On each form, the total impairment figure is lined through. Also attached to the TWCC-69 is a "Spine Impairment Summary" form (Figure 84 of the AMA Guides) which records a zero rating for a specific disorder of the cervical spine and "invalid" for ROM. A narrative "Review of Findings" under the heading of SPINAL RANGE OF MOTION BY INCLINOMETER states: "Cervical studies were performed on two separate occasions. Studies revealed impairment in cervical extension, lateral flexion, and left rotation." In the transmittal letter accompanying the report and signed by Dr. O, he states in pertinent part:

When I performed a physical examination, his [ROM] was normal. The inclinometer test showed some impairment, yet when this test was repeated it did not even show the same findings as the original test. The [AMA] Guides are fairly clear

¹ Dr. O later amended this report to reflect a date of MMI of June 6, 1994, saying that the later date was an "inadvertent error" on his part.

about validity on [ROM]. Since [ROM] was normal on physical examination, no impairment can be assigned.

Other evidence relevant to the appealed issue was the testimony of the claimant that when he reported for his examination by Dr. O, other personnel, not Dr. O did the actual ROM measurements with the inclinometer. There was no suggestion that Dr. O did not review the results of these tests (included in his report) or failed to personally examine the claimant. See Texas Workers' Compensation Commission Appeal No. 93870, decided November 10, 1993.

The Appeals Panel has consistently stressed the unique position of the designated doctor and the presumptive weight accorded his opinion. See e.g., Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1993. In emphasizing that only the great weight of the other medical evidence can rebut this presumption, the Appeals Panel has noted that the other medical evidence can be contained in the report itself which then becomes, in effect, self-impeaching. Texas Workers' Compensation Commission Appeal No. 94842, decided August 17, 1994; Texas Workers' Compensation Commission Appeal No. 92621, decided December 23, 1992. Whether the great weight of the other medical evidence is contrary to the report of the designated doctor is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993.

In the case now appealed, the claimant urges, in effect, that Dr. O's report is fundamentally flawed because of irreconcilable inconsistencies. We disagree. From the claimant's own testimony, the hearing officer could well have concluded that Dr. O did not perform actual ROM measurements using an inclinometer. His report acknowledges that these tests showed some abnormality in cervical ROM. However, he explicitly stated that his own examination of the claimant showed no abnormality, and he chose to base his opinion of the correct IR on his own professional judgement after considering and discounting the results of testing with the inclinometer. It was his duty and responsibility to weigh the other reports in light of his own professional experience and judgement. There is evidence that he did this.

The decision and order of the hearing officer will be set aside only if the evidence supporting it is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The record in this case does not lead us to that conclusion.

Accordingly, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge