APPEAL NO. 950290

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001, *et seq*. (1989 Act). On January 13, 1995, a contested case hearing was convened in (city), Texas, with (hearing officer) presiding. The sole issue was the correct impairment rating (IR) to be assigned to the appellant, (claimant), who is the claimant, due to a compensable injury she sustained on (date of injury), while employed as a baker by the (referred to herein as either employer or carrier, depending upon the context).

The hearing officer noted that claimant had reached maximum medical improvement (MMI) on July 12, 1994 (there was no issue over this), and he found that claimant's IR was seven percent, in accordance with the report of the designated doctor.

The claimant has appealed, arguing that the great weight of medical evidence, specifically the opinions and treatment rendered by the treating doctor, were contrary to the report of the designated doctor, who saw her only one time. The appeal also notes that claimant denies she has reached MMI on July 12, 1994, because she is still unable to work. However, claimant argues that the 15% IR rated by her treating doctor is the correct one. The carrier responds that the designated doctor's report was properly given presumptive weight by the hearing officer, and that it was not overcome by the treating doctor's report. The carrier questions the accuracy of the fact that the treating doctor gave a substantial IR for loss of grip strength.

DECISION

We affirm.

We note that the claimant supplemented her appeal, a month after the first appeal was filed, with a new medical report, for a medical examination that occurred after the date of the contested case hearing decision. Our review is directed toward evidence developed in the record of the contested case hearing. Section 410.203(a). While we are also directed to consider an appeal, that appeal must consist of dispute and rebuttal of a hearing officer's decision. Section 410.202. While we will not consider the new evidence, we would note that the document submitted does not appear to be probative on the issue of the claimant's IR, which was the sole issue before the hearing officer.

Claimant was injured on (date of injury), when her right index finger was bent back against her hand when a mixing bowl flew off the mixer and caught her finger. Claimant has since had continuous pain from her finger, and testified it would pop out of joint with even mild activity. She stated that she worked through the date of her first surgery on her finger, which took place October 1, 1993. She had a second surgery on January 14, 1994. Claimant stated that a third scheduled surgery was called off when the carrier would not pay for that procedure.

The treating doctor for the period beginning September 1993 was (Dr. H). He performed both surgeries, neither of which provided much relief to claimant. Claimant also saw (Dr. M), who examined her on May 4, 1994, and opined that she had a painful scar of the right index finger, with adhesions and scar entrapment of the radial digital nerve. Dr. M opined she might need a third surgery, although her scar would not likely go away. Claimant stated that in July 1994, Dr. H told her that he could not do anything else for her, and "gave" her MMI. Dr. H certified claimant reached MMI on July 12, 1994, with a 15% IR. His narrative indicates that most of the rating was derived from reduced grip strength in claimant's right hand. As to specific IR derived from claimant's index finger, he found that this amounted to six percent of the upper right extremity, for a total 25% of the upper right extremity which translated to 15% whole body IR. At the time of the hearing, Dr. H was no longer claimant's treating doctor.

The designated doctor was (Dr. D), who reported on August 24, 1994, that claimant had reached MMI on July 12, 1994, with a seven percent IR. He derived his IR from loss of range of motion of the index finger, as well as sensory deficits. Dr. D noted that claimant's muscle testing was "5/5"; he found no muscular atrophy. He opined that her symptoms were indicative of mild reflex sympathetic dystrophy and hyperesthesia. Dr. D considered her past surgical history, and opined that future surgery would be unlikely to yield significant improvement. Dr. D outlined the calculations underlying his seven percent rating.

"Impairment" is defined in the 1989 Act as "any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent." Section 401.011(23). Further, impairment must be based upon "an objective clinical or laboratory finding." Section 408.122(a). Whether an impaired person can or cannot return to work is not the guiding factor in rating impairment.

The report of a designated doctor appointed by the Texas Workers' Compensation Commission (Commission) is given presumptive weight. Sections 408.122(b), 408.125(e). The amount of evidence needed to overcome the presumption, a "great weight," is more than a preponderance, which would be only greater than 50%. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992. We would note that when the IR for the index finger is compared in both reports, the designated doctor's rating is actually higher than Dr. H's report. Dr. D tested for claimant's muscular strength and evidently did not find it ratably impaired. (Dr. H's basis for assigning a rating for loss of grip strength, the major difference in the two reports, is not tied to the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association in his report). The hearing

officer was evidently not persuaded that the duration of Dr. H's treatment of claimant was a factor in making his IR evaluation a great weight against Dr. D.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination 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 the conclusion that the hearing officer's determination has been clearly wrong, and the decision and order of the hearing officer are accordingly affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge