

APPEAL NO. 950391

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer, (hearing officer), convened a contested case hearing in (city), Texas, on November 16, 1994, and took evidence on the sole disputed issue, namely, the appellant's (claimant) impairment rating (IR). She closed the record on January 31, 1995, after communicating with the designated doctor appointed by the Texas Workers' Compensation Commission (Commission) and giving the parties an opportunity to respond to the designated doctor's reply. Finding that the report of the designated doctor was not contrary to the great weight of the other medical evidence, the hearing officer concluded that claimant's IR was 10%. In his appeal claimant asserts, generally, that the designated doctor's report contains "many errors" and fails to comply with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and claimant appears to invite the Appeals Panel to compare the designated doctor's computations and the content of his report with various provisions and tables in the AMA Guides and satisfy itself that the designated doctor's report is replete with error. This we decline to do. Section 410.202(c) provides that a request for appeal "must clearly and concisely rebut . . . the decision of the hearing officer on each issue on which review is sought." While claimant in argument at the hearing elucidated certain specific computational errors by the designated doctor concerning his impairment from loss of cervical range of motion (ROM), in his appeal claimant's specific errors concern the designated doctor's having invalidated his lumbar ROM tests and the failure to assign impairment for his specific disorders of the cervical and lumbar spine. The respondent's (carrier) reply points to the absence of medical evidence to support claimant's assertions and contends that the hearing officer's dispositive findings are not against the great weight of the evidence.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on (date of injury), and submitted their respective cases on documentary evidence.

(Dr. C), who examined claimant on June 7, 1994, at the request of the carrier, stated in a Report of Medical Evaluation (TWCC-69) that claimant's IR was "5%" for his "lumbar spine." In his accompanying narrative report of June 8th Dr. C recited that claimant's injury occurred when he was struck in the back and knocked down by the bar on a machine, that after treatment in Mexico and at a clinic he has since February 1994 been seeing (Dr. N) and has been receiving physical therapy for three and one-half months, and that he complains of constant low back pain radiating to his neck. After reporting claimant's degrees of flexibility, Dr. C commented as follows: "He moves with very melodramatic demeanor about him. He is very inappropriate." Dr. C also reported that claimant's "neurological assessment is normal for both lower extremities" and that his motor tone and strength were normal. With respect to SLRs in the supine position Dr. C stated that

claimant's "straight leg raising and Lasegues's maneuvers are inappropriate. He allows me 20 degrees of raising, compared to 80 degrees in the seated position." Dr. C's diagnosis was lumbar strain and contusion and he assigned a five percent IR for the lumbar spine and stated he found "no evidence of residual other than loss of [ROM]."

In his TWCC-69 of August 1, 1994, the designated doctor, (Dr. A), assigned a 10% IR consisting of four percent for lumbar ROM and six percent for cervical ROM. In his accompanying narrative report Dr. A stated the diagnosis as soft tissue injury of the lumbar spine - contusion, and soft tissue injury of the cervical spine. Dr. A also recited that claimant was then under the care of (Dr. G) for chronic pain management, that he had previously been certified as having reached MMI by Dr. N, and that he complained of discomfort and stiffness in the neck and low back. No records of Dr. G and Dr. N were in evidence. Dr. A also stated that his assignment of the 10% IR was based on his clinical findings and his review of diagnostic studies and medical records, and that it was calculated in accordance with the AMA Guides mandated for use by the Commission. See Section 408.124(b). Dr. A reported as "good" or "normal" the results of his examination of claimant's upper and lower extremities in terms of reflexes, muscle testing and sensory testing. Dr. A reported in detail the results of his testing of claimant's cervical and lumbar ROM and attached AMA Guides worksheets on which were recorded the measurements. Dr. A assigned four percent for loss of lumbar lateral flexion ROM and stated that the SLRs had invalidated the lumbar ROM tests. Dr. A recorded the sacral flexion at 20 degrees, the sacral extension at 10 degrees and their sum at 30 degrees. He then used the SLR measurement of 55 degrees to compare to the 30 degrees and invalidated the lumbar flexion and extension measurements which were 45 and 10 degrees, respectively. Dr. A also assigned six percent for loss of cervical extension and right and left cervical rotation. He did not assign any impairment for cervical flexion or for cervical lateral flexion.

Claimant introduced an August 15, 1994, letter from Dr. N which stated that he had reviewed Dr. A's report and disagreed with his impairment based on the relative spinal motions studies Dr. A reported as opposed to the Cybex EDI 320 Automatic Inclinometer study done by a therapy clinic. No such study was in evidence. Dr. N also commented that Dr. A had given no impairment for "the soft tissue injury itself."

Addressing first Dr. A's invalidation of claimant's lumbar ROM measurements, claimant's position was that in applying the SLR validity check on lumbar ROM Dr. A should have used the sum of claimant's maximum true lumbar flexion and extension angles, 45 and 10 degrees respectively, to compare with the SLR ROM. On November 30, 1994, the hearing officer wrote Dr. A asking for clarification of his invalidation of lumbar ROM, for clarification of his cervical ROM rating, and also about impairment for the specific spinal injuries under Table 49 of the AMA Guides. Dr. A's reply of December 8th indicated with regard to the SLR validation check on lumbar ROM that it was the sum of the sacral flexion and sacral extension, 30 degrees, that must be compared to the SLR ROM. The AMA Guides provide at paragraph 3.3e that "a comparison of hip flexion to straight leg raising on the tightest side offers a validation measure independent of reproducibility [emphasis

supplied]" and Figure 83c states that "if the tightest SLR ROM exceeds the sum of sacral flexion and extension by more than 10 degrees the lumbar ROM test is invalid [emphasis supplied]." Further, as the carrier notes, while claimant argued for his contention, he presented no evidence, let alone medical evidence, to the effect that Dr. A should have used the sum of the lumbar flexion and extension to compare with the tightest SLR. Section 408.125(e) provides that the report of the designated doctor shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. Thus, we find no error in Dr. A's using the sum of the sacral flexion and extension measurements to invalidate the lumbar ROM testing. Dr. A also indicated that he used the right SLR of 55 degrees to compare with the 30 degrees sum of sacral flexion and extension because the first three SLRs (right side), 28, 48, and 57 degrees respectively, were invalid. Dr. A apparently felt they did not meet the consistency criteria of plus or minus 10% or five degrees provided for in the AMA Guides at paragraph 3.3a stating general principles of spinal measurement.

With respect to the designated doctor's not assigning impairment for specific disorders of the cervical and lumbar spine, we do not find such to be contrary to the great weight of the other medical evidence. Table 49 of the AMA Guides, entitled "Impairment Due To Specific Disorders of the Spine," provides at Part II A for zero percent impairment for lumbar soft tissue lesions "unoperated with no residuals." Dr. A stated in his response to the hearing officer's inquiry that he did not assign impairment under Table 49 because "[t]here were no objective findings of abnormalities in these areas." Dr. C diagnosed "lumbar strain and contusion" and his report, which assigns five percent for the "lumbar spine," does not state whether that impairment is for a specific lumbar spine disorder under Table 49 of the AMA Guides, for abnormal lumbar ROM, or for neurological deficit, although the report does state that Dr. C found no evidence of residual other than loss of ROM. Dr. N's letter simply states that Dr. A gave no impairment "for the soft tissue injury itself."

Section 408.122(a) provides in part that a claimant "may not recover impairment income benefits unless evidence of impairment based on an objective clinical or laboratory finding exists." Also, Impairment is defined as "any anatomic or functional abnormality or loss existing after maximum medical improvement [MMI] that results from a compensable injury and is reasonably presumed to be permanent. [Emphasis supplied.]" Section 401.011(23).

We view the evidence as sufficiently supportive of the dispositive findings and conclusion that claimant's IR is 10% and do not find them so against the great weight of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The Appeals Panel has stated that the designated doctor occupies a unique position in the process of resolving disputes over MMI and IR, that no other doctor's report is accorded this special presumptive status, and that overcoming such presumptive status requires more than a mere balancing or preponderance of the evidence. *See generally* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 93539, decided August 12,

1993; Texas Workers' Compensation Commission Appeal No. 93932, decided November 29, 1993. Further, the disputed issue presented the hearing officer with a question of fact to resolve and it is the hearing officer who is the sole judge of the relevance, materiality, weight and credibility of the evidence. Section 410.165(a). It is for the hearing officer to resolve the conflicts and inconsistencies in the evidence including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Dr. A found no objective finding of abnormality in the cervical and lumbar areas ratable under Table 49 II and may have concluded that the soft tissue injuries he had diagnosed had resolved without permanent impairment. In Texas Workers' Compensation Commission Appeal No. 941479, decided December 16, 1994, affirmed by the Appeals Panel, the designated doctor similarly assigned zero percent impairment under Table 49 and one percent for abnormal lumbar ROM. The diagnosis was chronic lumbosacral strain. Cf. Texas Workers' Compensation Commission Appeal No. 950223, decided March 30, 1995.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge