APPEAL NO. 950432

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 23, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He found that appellant (claimant) has an impairment rating (IR) of 14% as found by the designated doctor, (Dr. E). Claimant asserts that a more recent evaluation by claimant's treating doctor, (Dr. D) assigning a 16% IR is more accurate; claimant adds that because of "over medication" claimant was better able to move which affected his IR when seen by Dr. E. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant had worked for (employer) for two years when he felt pain in his lower back while loading skids into a trailer on (date of injury). Claimant could not straighten his back for a period of time. He had surgery in June 1993. Thereafter his treating doctor then, (Dr. GV), in December 1993 signed a Report of Medical Evaluation (TWCC-69) saying claimant was not at maximum medical improvement (MMI) but his IR should be 15%. Dr. D signed a TWCC-69 in February 1994 indicating that MMI will not be reached until June 15, 1994, but adding that his IR was 15%. In an unsigned letter dated June 15, 1994, Dr. D then said claimant has reached MMI but says that the IR is 17% (made up of 10% from table 49, Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and eight percent for range of motion (ROM), which when combined result in 17%).

The designated doctor, Dr. E, then saw claimant on September 8, 1994; he found MMI on June 15, 1994 (the parties stipulated that claimant reached MMI on June 15, 1994), and assigned a 14% IR (based on 10% from table 49 of the AMA Guides, two percent ROM, and two percent neurological deficit). Claimant's description of Dr E's examination shows no inadequacy; relative to this exam, claimant contends that having taken two pain killing pills that morning instead of one, he was able to move more freely than normal. The claimant never did provide the name of the medication he states he took in twice the quantity normally taken. The hearing officer pointed out in his opinion that he considered this but did not find it persuasive in determining whether the designated doctor's opinion should be given presumptive weight; we note that the designated doctor was aware that claimant was taking a pain medication.

The last IR was provided by Dr. D in an unsigned letter dated January 26, 1995, in which he says that the IR should be 16%, made up of 10% from Table 49 of the AMA Guides and six percent for ROM. (We note that 10% and six percent should be combined for 15%, rather than added for 16%.) Claimant argues that Dr. D knows his condition better than Dr. E and provided the most recent IR, which together indicate a more accurate amount and

should be considered the great weight of other medical evidence to overcome the designated doctor's opinion.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. Texas Workers' Compensation Commission Appeal No. 93031, decided february 25, 1993, pointed out that the legislature chose to give presumptive weight to the designated doctor even though a treating doctor would be more aware of a claimant's treatment and progress. In addition, Section 408.123, in providing that an IR will be assigned "after an employee has been certified by a doctor as having reached maximum medical improvement", does not indicate that an IR in close proximity to the date of hearing should be given more weight than one closer to the date of MMI.

With no identification of the medication said to have been taken in a larger dosage than normal, the hearing officer was provided no basis for finding that properties of the medication affected claimant in such a way as to question the evaluation by Dr. E. In addition, the hearing officer could consider that Dr. E knew claimant was on medication and did not indicate that fact affected his examination. Even had there been such identification, we note that the difference in the IR's is one percent, with Dr. E finding 14% and Dr. D finding 15% (although he reported 16%). The evidence was sufficient to support the hearing officer's decision to give presumptive weight to the opinion of the designated doctor.

Finding that the decision and order of the hearing officer are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge