APPEAL NO. 010327

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 24, 2001, a contested case hearing (CCH) was held. With regard to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury extends to and includes reflex sympathetic dystrophy (RSD) and that the claimant's impairment rating (IR) is 19%. The appellant (carrier) urges on appeal that the compensable injury does not extend to the RSD condition and alternatively, even if it does, the correct IR is either 4% or 7%. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury extends to and includes his RSD condition. The medical records reflect that the claimant sustained a puncture wound to his right thumb in _____. The wound subsequently became infected, requiring three exploratory operations. Upon successful treatment of the infection, the claimant continued to experience pain in his thumb, palm, and shoulder. Based upon the results of a bone scan indicating the presence of localized RSD in the thumb, an aggressive RSD treatment program was recommended. The medical records reflect that the claimant was examined by five doctors. Each of these doctors diagnosed RSD secondary to the thumb wound and resulting infection.

Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case 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, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so against the weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in giving presumptive weight to the designated doctor's IR under Sections 408.122(c) and 408.125(e). Dr. S assigned a 19% IR, which was comprised of 5% for range of motion (ROM) and 15% for RSD. Dr. S subsequently clarified that he felt it appropriate to rate the RSD condition under Section 4.1b of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated

February 1989, published by the American Medical Association (AMA Guides), relating to spinal cord injuries, because the AMA Guides do not otherwise provide a basis for rating RSD. The carrier presented conflicting medical evidence, in the form of a peer review report written by Dr. B, asserting that the IR assigned by Dr. S was invalid because he had misapplied the AMA Guides by rating claimant's RSD condition under the section relating to spinal cord injuries. Dr. B did not, however, offer any other method for rating RSD.

In Texas Workers' Compensation Commission Appeal No. 001120, decided July 5, 2000, the Appeals Panel affirmed a hearing officer's decision giving presumptive weight to a designated doctor's IR. In that case, the designated doctor had rated the claimant's RSD using Chapter 4 and the carrier argued, as the carrier argues here, that the designated doctor had improperly applied the AMA Guides in doing so because the claimant did not sustain a spinal cord injury. Appeal No. 001120 noted that the AMA Guides do not specifically provide a basis for rating RSD and that the designated doctor and the carrier's doctor used different approaches in an attempt to rate the claimant's compensable injury. The hearing officer in Appeal No. 001120 gave presumptive weight to the method used by the designated doctor to rate the claimant's RSD because he did not determine that the method proposed by the carrier's doctor constituted the great weight of the other medical evidence contrary to the designated doctor's report. Dr. S used the same approach that the designated doctor used in Appeal No. 001120. His decision to do so does not reflect an improper use of the AMA Guides; rather, it reflects an exercise of Dr. S's professional medical judgment to select an approach to determine the most appropriate rating for the claimant's RSD, a condition not specifically provided for in the AMA Guides. We do not find that the method used by Dr. S to rate the claimant's RSD condition resulted in an improper use of the AMA Guides. Accordingly, the hearing officer did not err in giving presumptive weight to the IR certified by the designated doctor.

The decision and order of the hearing officer are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge