APPEAL NO. 92275

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon's Supp. 1992). On May 18, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that claimant, appellant herein, had disability until March 31, 1992, but not thereafter and that he reached maximum medical improvement (MMI) on March 31, 1992, with no impairment rating. Appellant asserts that MMI has not been reached. In so stating, appellant says further tests are pending, the opinion of (Dr. X) and (Dr. P) did not consider appellant's shoulder, and appellant has been deprived of due process and equal protection because Dr. X's and Dr. P's reviews were incomplete.

DECISION

Finding that the hearing officer correctly applied the provisions of Article 8308-4.25 of the 1989 Act, regarding the weight to be given certain evidence, and that the decision is supported by sufficient evidence of record, we affirm.

Appellant is 25 years old and had worked for his employer, an oil company, as a floor hand on an oil rig for approximately seven months when he hurt his back in a fall on (date of injury). All parties agreed that it was a compensable injury. Appellant first went to his family doctor who referred him to (Dr. W), an orthopedic surgeon. Dr. W released appellant to restricted work on September 12, 1991, when x-rays were

normal and a CT scan showed a minimal bulge at L4-L5 (an area in the lower vertebrae of the back). Appellant began seeing (Dr. A) on September 18, 1991. While under Dr. A's care, an EMG was "suggestive" of nerve root irritation at L4-L5; an MRI was normal; and a myelogram was normal, but a CT scan at that time could not rule out some herniation of the disc at L5-S1.

Appellant testified that he still had pain and could not work. He saw Dr. P on January 13, 1992, at the request of the carrier. Dr. P found MMI with no impairment as of January 13, 1992, and reported this on a TWCC Form 69 with a three page report of that examination. Dr. P did not have the myelogram but did have the MRI. He criticized the CT scan as unreliable as a test. He did not find significant objective evidence of abnormality. This report was sent to Dr. A, but the record contains no comment by Dr. A in regard to it. A short time before the hearing, appellant was referred to (Dr. S) by Dr. A. Dr. S noted a history of pain and grinding in the shoulder, but found "full active motion" and no atrophy. Upon identifying an impingement syndrome, he recommended another MRI.

The Benefit Review Conference dealt with the disagreement as to MMI by appointing a designated doctor to examine appellant. Dr. X, in that capacity, reported that appellant reached MMI on March 31, 1992, with 0% impairment. He reviewed the test data previously mentioned, including the myelogram, and found no herniation of a disc.

The hearing officer applied the correct standard when she gave Dr. X's report, as designated doctor, presumptive weight. She then determined that the great weight of other medical evidence did not indicate that MMI had not been reached. The other medical data in the record, including that of Dr. V, Dr. W, Dr. A, Dr. P, and Dr. S is not sufficiently clear and probative in disagreement with Dr. X as to constitute that "the great weight of the other medical evidence is to the contrary."

The fact that other tests have been ordered does not, of itself, refute the finding that MMI has been reached. Tests are used by physicians to assist them in their practice. There is no evidence that any pending test, ordered by Dr. S, would have controlled or changed any physician's opinion. In Texas Workers' Compensation Appeal No. 92031 (Docket No. redacted) decided March 13, 1992, the possibility that evaluations could be extensive was discussed with some concern that the process could become open-ended. The hearing officer as the sole judge of the evidence (*see* Article 8308-6.34(e) of the 1989 Act) was capable of determining whether MMI had been reached or whether more tests were required in order for the medical opinion to be sufficiently thorough in reaching an opinion on this subject. The evidence was sufficient for her to decide that MMI could be found to have been reached without further tests.

As an administrative body, the appeals panel does not decide questions of constitutionality; that is best left for the courts. If we were to address such a question, we would not find that the extent of the evaluations by either Dr. P or Dr. X, in regard to any possible issue regarding the back of appellant's shoulder, was so limited as to be unreliable and therefore to lack due process and be unconstitutional. *See* Texas Workers' Compensation Commission Appeal No. 91080 (Docket No redacted) decided December 20. 1991.

Finding that the decision is sufficiently supported by evidence of record, we affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge