APPEAL NO. 92336
FILED AUGUST 31, 1992

A contested case hearing was conducted on June 23, 1992. The sole issue was the date on which claimant (respondent herein) reached maximum medical improvement (MMI). The hearing officer found that respondent had reached MMI on June 2, 1992, the date MMI was certified by the doctor designated by the Texas Workers' Compensation Commission (Commission). Appellant contends on appeal that the hearing officer erred by concluding that the designated doctor's opinion was not overcome by contrary medical evidence. Respondent contends the hearing officer reached the proper decision based on the facts and the law.

DECISION

Finding no error on the part of the hearing officer, we affirm.

No oral testimony was presented at the hearing. Documents admitted into evidence showed that (Dr. P), the designated doctor, examined respondent on June 2, 1992 and certified MMI had been reached as of that date. The parties agreed that Dr. P had been appointed by the Commission pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act), which allows the Commission to appoint a designated doctor where a dispute exists as to whether an employee has reached MMI. Article 8308-4.25(b). That section also provides that the report of the designated doctor shall have presumptive weight, and the Commission shall base its determination as to whether the employee has reached MMI on that report unless the great weight of the other medical evidence is to the contrary. The hearing officer thus properly considered the other medical evidence in the record.

Also included as evidence was a report of (Dr. DY), a doctor selected by appellant, who examined respondent and certified MMI as of January 9, 1992. Numerous return to work slips and a specific and subsequent medical report from (Dr. M), respondent's treating physician, were made part of the record. These advised that respondent continue to rest for the periods of time indicated.

The hearing officer found that respondent's treating doctor had not certified his having reached MMI. She also found that the opinion of Dr. P, the designated doctor, had not been overcome by the evidence of Dr. DY's certification of MMI in January 1992.

Appellant contends that the reports of Drs. P and DY both indicate lumbosacral strain, with no objective finding to indicate an orthopedic abnormality. The only difference between the two, appellant claims, is in the dates MMI was certified. Appellant notes that it requested a benefit review conference following Dr. DY's January 9th certification of MMI. The conference was held on February 26th, but respondent was not seen by Dr. P until June 2nd. Since the evidence shows there was no change in respondent's condition between January 9th and June 2nd, the appellant argues, it should not be penalized for the

period of time it took respondent to be seen by the designated doctor.

As noted above, the 1989 Act provides that the report of the designated doctor on MMI shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. Appellant does not argue that Dr. DY's report is contrary to Dr. P's result; indeed, appellant argues that they are effectively the same except for the date. We believe the Act's reference to the designated doctor's report is inclusive of all portions, the date of MMI no less than any other part. The 1989 Act defines MMI, in part, as ". . . the point after which further medical recovery from or lasting improvement to an injury can no longer reasonably be anticipated . . ." Nothing in the statute or the rules, Texas W.C. Comm'n 28 TEX. ADMIN. CODE §§130.1 and 130.5, appears to prohibit a doctor from determining that the point of MMI occurred sometime in the past. The fact is that in this case, the designated doctor chose not to do so.

Among other things, the hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34(e). She chose to find that the presumptive weight accorded to the designated doctor's report was not overcome by the other medical evidence, and we find no error in that decision. To the extent that appellant may be arguing for equitable relief in the substituting of one date for another, we cannot do so. This case involves more than making a correction *nunc pro tunc*. To move the date of MMI back to January 9th would require a finding that Dr. DY's report was entitled to greater weight than that of Dr. P. This is what the hearing officer chose not to do, which we will not disturb on review.

The decision and order of the hearing officer are thus affirmed.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Susan M. Kelley
Appeals Judge