APPEAL NO. 92366

On July 7, 1992 a contested case hearing was held at (city), Texas, (hearing officer) presiding as hearing officer. She determined that the respondent/cross appellant's (hereinafter called claimant) impairment rating and date of maximum medical improvement (MMI) were as found by the Commission designated doctor. Appellant (hereinafter called carrier) urges error in the date of MMI determined by the hearing officer. Claimant urges that the impairment rating was too low. Neither side has responded to the others appeal and the designation of appellant was given to the party first filing its request for review.

DECISION

Finding a sufficient evidentiary basis for the hearing officer's decision and order, the case is affirmed.

The single issue announced at the contested case hearing was: "[w]hat is claimants correct impairment rating?" Briefly, there was an MMI date and impairment rating from both the carrier's requested doctor (impairment rating of 10% with an MMI date of August 26, 1991) and the claimant's treating doctor (impairment rating of 30% with a MMI date of December 30, 1991). Subsequently a benefit review conference was held and the claimant was ordered to be seen by a Commission selected designated doctor. The designated doctor determined that the impairment rating was 13% and that MMI was reached on February 24, 1992. The claimant urged that this rating was too low and offered reports from his treating doctor, reports from (Hospital), reports from other physicians, and various correspondence and documents concerning his back injury and his claim. He also testified that he had been working at two different jobs since his injury and that he carried items, but none that were heavy.

Article 8308-4.26(g), TEX. REV. CIV. STAT. ANN., art. 8308-4.26(g) provides that the designated doctor's determination of impairment rating shall be given presumptive weight unless his rating is contrary to the great weight of the other medical evidence. The hearing officer determined that the certification of MMI and impairment rating of the designated doctor were not contrary to the great weight of the other medical evidence and ordered benefits based upon those determinations. There is sufficient evidence to support the hearing officers decision. The relevant evidence offered by the claimant was largely cumulative of the medical reports of the three doctor's making the ratings and did not amount to a "great weight" of other medical evidence so as to overcome the presumption. Texas Workers' Compensation Commission Appeals No. 92387 (Docket No. redacted) decided September 8, 1992.

We now turn to the issue raised by the carrier concerning the date MMI was reached. A finding of MMI is necessary to give rise to the entitlement to impairment income benefits (Article 8308-4.26(c)) and those benefits are based upon an impairment rating. Further, a doctor certifying MMI must then assign an impairment rating using the prescribed impairment guidelines. Article 8308-4.26(d). Although the 1989 Act sets out provisions

regarding the reaching of, and the resolution of disputes about, MMI in Article 8308-4.25 and provides for the resolution of disputes concerning impairment ratings in Article 8308-4.26(g), the two matters may become somewhat inextricably tied together. The Commission rules on a designated doctor discuss the two matters under a single rule (Tex W.C. Comm'n, 28 TEX. ADMIN. CODE §130.6, (TWCC Rule 130.6)) and requires the designated doctor to file a medical evaluation report which includes both a determination of MMI and an impairment rating under TWCC Rule 130.1. This is not to say, however, that the two matters could never be separately decided or agreed upon under particular circumstances, for example, where the doctors determining MMI arrive at the same MMI date. Here, there is nothing to indicate that both the MMI date and impairment rating did not remain unresolved.

Accordingly, we do not find merit in the carrier's assertion that the date of MMI as determined by the hearing officer should have been December 30, 1991. While it is accurate to say that the issue at the hearing as stated only mentioned the impairment rating, there is nothing to indicate there was any agreed or established date for the reaching of MMI at the time of the contested case hearing. And, at the contested case hearing there was evidence of three different dates by three different doctors. Under such circumstances without a factual determination being made, the basis upon which to determine the starting date of impairment income benefits is left confused and unclear. Parenthetically, we note that there is no presumptive weight accorded to any one particular doctor, including the treating doctor, in regard to MMI. Consequently, short of starting all over again to establish an MMI date based upon the evidence on the issue already before the hearing officer, it was appropriate for the hearing officer to determine this unresolved matter. It was her responsibility to resolve conflicts in the evidence: she cannot be faulted for determining the date as found by the designated doctor regardless whether or not this determination was entitled to presumptive weight. As the fact finder, she resolves conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex Civ. App.-Amarillo 1974, no writ). We find no basis to conclude her determination on this factual matter was so contrary to the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order are affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Joe Sabesta
Appeals Judge