APPEAL NO. 92387

On July 7, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The claimant, (claimant), appellant herein, disputes the hearing officer's determinations that he reached maximum medical improvement (MMI) on June 2, 1992, and that his average weekly wage (AWW) was properly calculated at $155.57. Respondent, the employer's workers' compensation insurance carrier, responds that the hearing officer's findings are supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Appellant was injured at work on (date of injury). (Dr. B), the doctor selected by the Texas Workers' Compensation Commission (Commission) as the designated doctor, certified in a Report of Medical Evaluation (TWCC-69) that appellant had reached MMI on June 2, 1992, and assigned appellant an impairment rating of zero. (Dr. B) stated that appellant had suffered a lumbar sprain in (month year) which had resolved. (Dr. H), who had treated appellant for his injury, certified in a TWCC-69 that appellant had reached MMI on May 19, 1992, and assigned appellant an impairment rating of zero. In a note dated July 7, 1992, (Dr. K), appellant's current treating doctor, stated that appellant's studies are normal and that he felt that appellant has probably reached "maximum medical benefit." Pursuant to Article 8308-4.25(b), the report of the designated doctor has presumptive weight, and the Commission must base its determination as to whether the employee has reached MMI on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. *See also* Tex. Workers' Comp. Comm'n, 28 TEX. ADMIN. CODE Sec. 130.6 relating to the designated doctor. We hold that the hearing officer's determination that appellant reached MMI on June 2, 1992, as reported by the designated doctor, is supported by the evidence, and is not contrary to the great weight of the other medical evidence.

Respondent had paid appellant at least 60 weeks of temporary income benefits (TIBS) up to the date of the benefit review conference in May 1992. Appellant's position was that his AWW for purposes of calculating TIBS was greater than the amount that had been determined by respondent using wages paid to a same or similar employee. Appellant testified that he had not worked for the employer for at least 13 consecutive weeks immediately preceding the injury. He introduced into evidence his preinjury earnings statements from the employer which showed that he was paid at the rate of $5.00 per hour and that he had worked 20 hours one week, 32 hours another week, and 40 hours his last week of work. Respondent introduced into evidence an Employer's Wage Statement (TWCC-3) which identified a similar employee performing similar services as appellant. This employee's hourly rate was the same as appellant's and the employee had worked for the employer from 23 to 47 hours per week for 13 weeks. The AWW calculated from the wage statement was $155.57. Pursuant to Article 8308-4.10(b), if the employee has

worked for the employer for fewer than 13 weeks immediately preceding the injury, the AWW equals the usual wage that the employer pays a similar employee for similar services. *See also* Tex. Workers' Comp. Comm'n, 28 TEX. ADMIN. CODE Sec. 128.3 relating to AWW calculation for full-time employees, and for TIBS for all employees. We hold that the hearing officer's determination that respondent properly calculated appellant's AWW at $155.57 is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust.

Appellant also complains of "not being granted a legal aid in presenting case." Testimony at the hearing revealed that appellant had talked to a Commission Ombudsman on several occasions about his case, and that appellant had at some point retained an attorney to represent him, but had terminated his attorney's representation prior to the benefit review conference. He fired his attorney because he only wanted to pay the attorney $100 for representing him and did not want attorney's fees deducted from his income benefits. Appellant had also contacted two other attorneys prior to the hearing but hired neither of them. There is no provision in the 1989 Act or in the Commission's rules which requires the Commission to provide legal counsel to a party to a contested case hearing. We find no merit in appellant's complaint on appeal.

The decision of the hearing officer is affirmed.

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Robert W. Potts
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge