APPEAL NO. 92514

On September 14, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The issues in the contested case hearing (CCH) were: (a) whether the claimant had reached maximum medical improvement (MMI); (b) if so, what is the correct impairment rating; (c) are temporary income benefits (TIBS) due claimant; and, (d) if so, what is the amount of TIBS due. The hearing officer found that claimant had reached MMI as of May 26, 1992, that claimant had a zero percent whole body impairment rating, and that claimant was entitled to receive TIBS through May 26, 1992. The claimant "disputes the decision . . . and appeals this matter." A brief response requests that the Appeals Panel affirm the decision of the hearing officer.

Decision

The hearing officer's decision is affirmed.

(Claimant), the 30-year-old claimant, was employed by (employer) who was insured with (carrier), the carrier. It is not clear how long the claimant had worked for the employer; however, on (date of injury), claimant alleges he injured his back when he slipped while pushing a wheelbarrow down a steep slope. The next day claimant sought treatment at the emergency room (ER) at (hospital) in (city) for back pain and fresh blood in his stool. The diagnosis from the ER was lumbosacral strain and a rectal fissure or hemorrhoidal tag. Claimant was referred to (Dr. DH), who had previously treated claimant for an unrelated hand injury. Dr. DH saw claimant on January 28, 1992, and found no anomalies, fractures, tumors, or growths of any kind. He recommended conservative treatment with heat and massage and physical therapy. Claimant left Dr. DH because he felt that the doctor was not helping him. Claimant next sought treatment from (Dr. ED), who began giving claimant injections, ranging from 13 or more per treatment up to 28 in one day, on one occasion. At the carrier's request, the claimant was examined by (Dr. JP) who reported by letter dated April 1, 1992, that claimant revealed no evident organic pathology and had reached MMI. He also expressed concern regarding the large number of injections the claimant was receiving. Dr. JP completed a Medical Evaluation Report (TWCC-69) showing MMI as of April 1, 1992 with a whole body impairment rating of zero percent. For reasons that are unclear Dr. ED had left his practice and claimant's treatment was taken over by (Dr. MD), who was Dr. ED's sister. Dr. MD referred claimant for an MRI. The MRI was done by (Dr. VW), who essentially found a normal MRI. The claimant disagreed with Dr. JP's findings and the parties were unable to agree on a designated doctor.

The Texas Workers' Compensation Commission (Commission) then appointed (Dr. CR) as the designated doctor. Dr. CR examined claimant and found nothing remarkable. Initially, Dr. CR said that he was not sure if claimant had reached MMI because he did not have claimant's medical records, x-rays or MRI. Upon receiving this documentation, Dr. CR completed a TWCC-69 in which he stated claimant had reached MMI as of May 26, 1992, and assigned a whole body impairment rating of zero percent. At the Benefit Review Conference, the Benefit Review Officer issued an interlocutory order for the carrier to pay

TIBS through May 26, 1992. A Contested Case Hearing was commenced on September 8, 1992, and recessed for a week to allow claimant to obtain the results of an examination by (Dr. PG), an orthopedic surgeon claimant had consulted, to contest the finding of the designated doctor. Dr. PG's report was received into the hearing record on September 14, 1992. Dr. PG concurred with the prior evaluations of Dr. CR, the designated doctor, and Dr. JP, the carrier's doctor. The final diagnosis was: (1) lumbosacral strain and (2) cervical spine strain. Dr. PG opined the claimant had reached MMI and had no further recommendations. Claimant apparently saw some other doctors but their findings were not available nor offered into the record.

The Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-4.26(g) (Vernon Supp. 1992) provides, in pertinent part, as follows:

> If the impairment rating is disputed, the commission shall direct the employee to be examined by a designated doctor selected by mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor selected by the commission. . . . If the parties agree on a designated doctor, the commission shall adopt the impairment rating made by the designated doctor. If the commission selects a designated doctor, the report of the designated doctor shall have presumptive weight and the commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary, in which case the commission shall adopt the impairment rating of one of the other doctors.

We note the hearing officer in Conclusion of Law No. 2 states that "The Commission adopts the medical report of [Dr. R] . . . " (emphasis added). This conclusion of law is in error as the Commission shall "adopt" the impairment rating only if the parties agree on a designated doctor, which they did not. Rather, when the Commission selects the designated doctor, as they did in the instant case, the report of the designated doctor shall only have presumptive weight. Article 8308-4.25(b) regarding MMI also provides that the report of the designated doctor, whether selected by agreement or by the Commission, only receives presumptive weight in reaching a determination on MMI. Notwithstanding that the conclusion of law is in error because an incorrect standard (adopted rather than presumptive weight) was used, we find that based on a review of the record, and in the absence of any opinion contrary to that of the designated doctor, as to MMI and whole body impairment, it is not necessary to reverse and remand.

There is an abundance of medical evidence in this case. The hearing officer apparently found the overwhelming weight of that evidence to establish that claimant had reached MMI on May 26, 1992, and that claimant had a zero percent whole body impairment rating. We do not disagree.

The parties were unable to agree on a designated doctor and the Commission

selected the designated doctor, Dr. CR. Dr. CR's report was generally consistent with the opinions of Dr. JP, the employer's doctor, Dr. VW, who did the MRI at Dr. MD's request, and Dr. PG, from whom claimant sought a subsequent opinion. In fact, other than a slight difference over when claimant reached MMI, i.e., April 1 or May 26, 1992, all of the doctors, other than perhaps Dr. ED, were in agreement.

The opinion of Dr. CR, as the Commission's designated doctor, has presumptive weight and will be the basis of the impairment rating unless the great weight of the other medical evidence is to the contrary. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. As discussed, the great weight of the other medical evidence is consistent with Dr. CR's opinion. Hence, Dr. CR's determination of MMI as of May 26, 1992 and zero percent impairment rating is entitled to presumptive weight. *See* Texas Workers' Compensation Commission Appeal No. 92126, decided May 7, 1992.

The decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge