APPEAL NO. 92517

A contested case hearing was held in (city), Texas, on August 20, 1992, (hearing officer) presiding as hearing officer. She determined that the respondent (hereinafter called claimant) had not reached maximum medical improvement (MMI) and that the issue of impairment rating had not ripened for resolution. The appellant (hereinafter called carrier) contends that the hearing officer's determination that the respondent had not reached MMI is against the great weight and preponderance of the evidence and urges us to reverse and render a new decision, or in the alternative, to reverse and remand.

DECISION

The decision of the hearing officer is affirmed.

The only issues at the contested case hearing were: (1) whether the claimant has reached MMI; and (2) what is the correct impairment rating resulting from the injury (a back injury) of (date of injury). These were the issues before the benefit review conference and were reported out in the conference report. The sustaining of a compensable injury was not in issue. Claimant was injured on (date of injury) and went to a (Dr. T) on (date). Dr. T became claimant's treating doctor until March 1992 when the dispute about MMI arose. Dr. T certified that as of March 2, 1992, claimant reached MMI and he assigned a whole body impairment rating of 20%. On March 6, 1992, carrier disputed the 20% impairment rating, assessed a five percent impairment rating, and requested the Commission to designate a doctor to assess an impairment rating on the claimant. This was not done until May 19, 1992, with an examination date of May 27 1992, by a (Dr. W) being established. Dr. W certified on May 27, 1992 that the claimant had not yet reached MMI and, therefore, did not address an impairment rating. At a subsequent benefit review conference the claimant disputed that MMI had been reached while the carrier urged MMI had been reached and that the only issue concerned the degree of impairment rating. Based upon the evidence before her, the hearing officer determined that the claimant had not reached MMI and that the issue of impairment rating was premature.

An impairment rating is not assessed until MMI is reached. Article 8308-4.26, TEX. REV. CIV. STAT. ANN., art. 8308-4.26 (Vernon Supp. 1992)(1989 Act). This is fully consistent with the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (Article 8308-4.24, 1989 Act) which provide in pertinent part that "[i]mpairment evaluation should be performed when a person's condition has become static and well stabilized following completion of all necessary passive, surgical, and rehabilitative treatment, thus precluding measurement when acute processes remain active" (Section 3.3a, page 71, which sets forth the general principles of measurement regarding the spine). Therefore, it would seem prudent, if not essential, that a designated doctor would himself have to be satisfied that MMI had been reached before attempting to assess an impairment rating. (We recognize that under the provisions of the Act it may become necessary for a doctor to assess a then existing impairment rating when MMI is reached by operation of law--the expiration of 104 weeks under the provisions of Article 8308-1.03(32)). However, absent that specific threshold having been reached, we have stated that the two matters

(MMI and impairment rating) "may become somewhat inextricably tied together," noting the Commission rule on designated doctors requires them to file a medical evaluation report which includes both a determination of MMI and an impairment rating. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.1, 130.6 (TWCC Rules 130.1,130.6). We also observed in Texas Workers' Compensation Appeal No. 92394, decided September 17, 1992, that "the existence of MMI cannot be neatly severed from assessment of an `impairment rating'." We went on to state that "[t]he Commission cannot, and should not, ignore a designated doctor who is unable to exercise his expertise to resolve a dispute over impairment rating, in good conscience, because he finds that the threshold requirement of MMI does not exist."

The carrier presses for the adoption of Dr. T's earlier finding of MMI but disputes his impairment rating, substituting therefor its own "reasonable assessment of the correct rating." However, when the designated doctor could not find that the claimant had reached MMI, the result was to afford the claimant an opportunity to raise the issue at the benefit review conference. In any event, whether or not the designated doctor's determination on MMI was entitled to presumptive weight (*see* Appeal 92366, *supra*; Texas Workers' Compensation Commission Appeal No. 92392, decided September 21, 1992), we find no basis to hold that the hearing officer could not give appropriate weight to the medical evidence of the designated doctor who addressed the matter of MMI, and determine, based on all the medical evidence, that MMI had not been reached. *See* Texas Workers' Compensation Commission Appeal No. 92074, decided April 8, 1992.

The decision of the hearing officer is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge