APPEAL NO. 92546

On September 16, 1992, a contested case hearing was held in (city), Texas with (hearing officer) presiding as hearing officer. The hearing officer determined that the greater weight of other medical evidence is contrary to the impairment rating (zero impairment) by the designated doctor and concluded the claimant had an eight percent impairment. He also determined the MMI date was June 16, 1992 as determined by the designated doctor. Appellant, (carrier), appeals contesting the impairment rating and the maximum medical improvement (MMI) date, urging the appeals panel to reverse the decision of the hearing officer. (claimant), filed a response alleging the designated doctor's opinion had been overcome by the great weight of other medical evidence, and urges the appeals panel to affirm the decision and order of the hearing officer. Claimant also challenges the designated doctor's "corrected" report as not being certified because it was unsigned. The case is decided under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act).

DECISION

Determining the hearing officer erred in his conclusion and decision that the designated doctor's report was outweighed by the other medical evidence, we reverse and the case is remanded for development of appropriate evidence, if any, and reconsideration not inconsistent with this opinion.

The evidence in this case consists almost entirely of medical reports. The claimant did testify, alleging he has not yet reached MMI but asserting the eight percent impairment rating given by (Dr. G) (a referral doctor) is more accurate than the zero percent impairment ratings given by other doctors. Claimant had apparently sustained some type of knee injury at some other time but it was agreed at the contested case hearing (CCH), that medical evidence related to the knee would not be considered since the disputed issue related only to a back injury.

The record and the hearing officer's decision show claimant injured his back on (date of injury) while working at (employer) when he bent over to pick up some wet towels. Claimant subsequently saw Dr. PP who referred claimant to (Dr. JR), a neurosurgeon who had previously operated on claimant's back. Claimant also saw Dr. G for a knee injury, which is not an issue in this case. The hearing officer made a specific finding that "[m]edical evidence related to claimants knee is not to be considered." Because of disagreements regarding MMI and impairment, the Commission appointed (Dr. DB), a general practitioner, as the designated doctor pursuant to Article 8308-4.26(g). Dr. DB found MMI on June 16, 1992 and a zero percent impairment rating. A subsequent TWCC-69 from Dr. DB was labeled "corrected" and showed an MMI of June 19, 1991 and a zero percent impairment rating. This report was not signed. At the CCH, the issues were framed as: (1) whether or not the claimant has reached [MMI]; and (2) what is the claimant's impairment rating. The claimant's position is that MMI has not been reached and there is an impairment based on the reports of Dr. PP, the treating doctor, and Dr. G, who saw claimant for the knee

condition not at issue. The carrier's position accepts the designated doctor's "corrected" findings. Dr. JR stated in his TWCC-69 that MMI had been reached on June 19, 1991 (the same as the designated doctor's "corrected" MMI date) with a zero percent impairment rating.

The hearing officer's findings, conclusions and decision, as they relate to the various medical reports, are listed as follows:

FINDINGS OF FACT

4.Medical evidence related to the Claimant's knee is not to be considered.

5.(Dr. P) is Claimant's Treating Doctor.

6.(Dr. R) and (Dr. G) were referral doctors and each is a specialist.

7.(Dr. B) is a general practitioner, and is the Designated Doctor.

8.(Dr. P) did not agree with the finding of (Dr. R).

9.(Dr. P) did agree with the finding of (Dr. G).

10.(Dr. G) ascribed an eight percent impairment to the Claimant as a result of his back injuries.

11.(Dr. B) found Maximum Medical Improvement as of June 16, 1992.

CONCLUSIONS OF LAW

2.The Claimant has eight percent impairment to the body as a result of his back condition.

3.The Claimant reached Maximum Medical Improvement of June 16, 1992.

DECISION

The presumptive weight given to the designated doctor is overcome by the medical evidence of (Dr. P) and (Dr. G), as related to impairment. The finding of Maximum Medical Improvement by the Designated Doctor is accepted.

No other reasoning is given regarding how the designated doctor's report is overcome by other medical evidence.

The hearing officer apparently places great reliance on the August 19, 1992 report

from Dr. PP, the treating doctor, who states: ". . . we did not agree with Dr. [JR's] MMI nor with his impairment rating of this man." Dr. PP also wrote the carrier by letter dated May 18, 1992 that claimant ". . . most likely has an unstable fusion" and ". . . has NOT reached [MMI]." Dr. G saw claimant in reference to claimant's right knee and states in an April 16, 1992 report, "as far as the back goes I do not think we have . . . enough information to say the patient has reached MMI . . ." In assigning an eight percent impairment rating, Dr. PP refers, or quotes, from Dr. G's opinion which is not in evidence. Conversely Dr. JR, a specialist, on a TWCC-69, Carrier Exhibit 7, gives a MMI date of 6/19/91 and zero percent impairment rating. Dr. DB, the designated doctor, in a "corrected" TWCC-69, Carrier Exhibit 8, also gives a MMI date of 6-19-91 and zero percent impairment rating. There is a narrative report from Dr. DB dated June 16, 1992 where he states ". . . it is my opinion that [claimant] is fully recovered from his lumbar strain and that he has reached MMI from the injury dating to (date of injury). I see no disability in regards to his injury on (date of injury) and his disability rating in reference to this particular injury is ZERO." Attached to this narrative is a TWCC-69 referring to the narrative and giving a MMI date of 6-16-92 with zero percent whole body impairment rating. The hearing officer in finding a MMI of June 16, 1992, and an eight percent rating gives no reasons, other than quoted above, showing the designated doctor's presumptive weight was "overcome by the medical evidence of Dr. [PP] and Dr. [G], as related to impairment." The hearing officer then adopts the designated doctor's MMI date of June 16, 1992, ignoring without comment, the designated doctor's original and "corrected" TWCC-69 showing a zero percent impairment rating.

The carrier appeals, pointing out that presumptive weight is to be given the designated doctor's opinion and that Dr. JR, a specialist and the designated doctor are in agreement on both the June 16, 1991 MMI date and the zero percent impairment rating. The carrier points out that the hearing officer "takes part of one doctor's TWCC-69 opinion regarding MMI date, and ignores two other doctor's findings. One of the ignored medical opinions is the Commissions's own Designated Doctor." The claimant's response is that the designated doctor's presumptive weight opinion can be overcome by the great weight of other medical evidence and that Dr. PP's report, in conjunction with Dr. G's report is such other medical evidence.

Claimant further complains that the "corrected" TWCC-69 from the designated doctor assigning a June 19, 1991 MMI was unsigned and does not constitute certification, under TWCC Rule 130.1(c)(4), citing Texas Workers' Compensation Commission Appeal No. 92027, decided March 27, 1992, and Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. Claimant's contention on this point is well taken. We have consistently held that the absence of the signature of a doctor purporting to "certify" that an employee had reached MMI resulted in an insufficiency of the evidence to support a determination that MMI had indeed been "certified" as required by Rule 130.1(c)(4). The "corrected" TWCC-69 indicating MMI of June 19, 1991 and zero percent impairment may not be considered.

As for the remainder of the decision, in a somewhat analogous case Texas Workers'

Compensation Commission Appeal No. 92412, decided September 28, 1992, we pointed out that in the not uncommon situation where there is disagreement between various medical reports and medical practitioners concerning MMI and assessing impairment ratings, a designated doctor may be appointed in accordance with Article 8308-4.25(b) and 8308-4.26(g). If the parties cannot agree on a designated doctor, as in this case, the Commission will select a designated doctor. If the Commission selects a designated doctor, the report of the designated doctor "shall have presumptive weight and the commission shall base (MMI and impairment rating) on that report unless the great weight of the medical evidence is to the contrary in which case the commission shall adopt the impairment rating of one of the other doctors." *See* Texas Workers' Compensation Commission Appeal No. 92412, *supra*, and Article 8308-4.26(g). The opinion goes on to state:

> [M]ore is required than a mere balancing of the evidence, as, for example, occurs in establishing a compensable claim, and determining that a preponderance of the evidence either does or does not establish that fact. Rather, in the area of MMI and impairment ratings, where there is a dispute regarding medical evidence, an attempt is made under the statute and rules to designate an independent doctor to finally resolve these matters. It is for this apparent reason that "presumptive weight" is specifically accorded the designated doctor's report. And, it is not just equally balancing evidence or a preponderance of evidence that can outweigh such report, but only the "great weight" of other medical evidence that can overcome it. We have previously emphasized the unique position that a designated doctor's report occupies under the Texas Workers' Compensation system. *See* Texas Workers' Compensation Commission Appeal No. 92555, decided July 27, 1992.

We have observed that no other doctor's report, including a report by the treating doctor, is accorded this special, presumptive status. *See* Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992, and Appeal No. 92412, *supra*.

We are unable to determine from the hearing officer's findings and conclusions what he relied upon in overcoming the presumptive weight of the designated doctor's finding of zero percent impairment, given the additional weight of the evidence from Dr. JR. Nor are we accorded any reasoning how the eight percent impairment by Dr. G who saw claimant for his knee injury, overcomes the zero percent impairment given by the designated doctor. Neither Dr. PP, the treating physician, nor Dr. G, even agree MMI has been reached. As such they would therefore presumably be unable to assign any impairment rating, although Dr. PP seems to adopt Dr. G's eight percent impairment rating from a report not in evidence.

Because we are unable to determine what the hearing officer relied upon and the appearance that he picked an MMI date from one report and an impairment rating from another report, virtually disregarding the designated doctor's impairment rating, as

supported by Dr. JR, we reverse and remand for reconsideration and development of evidence if deemed necessary or appropriate by the hearing officer, not inconsistent with this opinion.

Pending resolution of the remand, a final decision has not been made in this case.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Robert W. Potts
Appeals Judge