APPEAL NO. 92628

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp 1992). On October 6, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He found that appellant's (claimant hereafter) impairment from a knee injury was 10% as stated by the designated doctor, not 15% as stated by claimant's treating doctor. Claimant appeals saying that the doctor designated by the Commission is the same one that the carrier proposed as a designated doctor, and claimant refused to agree with the carrier as to that doctor's selection. Carrier points out that the designated doctor's report should be given presumptive weight and this designated doctor should not be disregarded simply because one of the parties suggested him for that purpose.

DECISION

Finding that the decision is supported by sufficient evidence, we affirm.

The only issue in this case was whether to determine impairment based on the rating of 15% given by the treating doctor or 10% given by the designated doctor. Claimant's treating physician, Dr. R, found MMI on March 10, 1992, while the designated doctor, Dr. P, in his report said on June 9, 1992, that claimant's medical condition is stabilized and not likely to improve (MMI).

Claimant is a forklift operator who slipped on a metal plate covering a hole, hurting his knee on (date of injury). He had arthroscopic surgery for torn cartilage, which also found degenerative problems, on December 3, 1991. He returned to work on January 3, 1992.

At hearing, claimant pointed out that it seemed unfair for the Commission to have selected Dr. P as the designated doctor after he had refused to agree to that doctor when the carrier suggested him. Claimant did indicate that he questioned the Texas Workers' Compensation Commission employee who made the selection. According to claimant, that employee replied that she did not know Dr. P had been proposed to claimant by the carrier when she selected him. The Commission did not retract its selection and name another designated doctor.

Neither the statute, Article 8308-4.25 and 4.26 of the 1989 Act, nor the rules, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 and 130.6, (Rules 130.5 and 130.6) require the Commission to learn the identity of any doctor proposed by a party and then undertake to select a doctor not so identified. The record indicates not only that no collusion between a TWCC employee and the carrier took place in regard to the selection, but shows that no one even suggests that as a possibility. If the selection were a sham, that fact should be addressed by any hearing officer; the selection could then be considered not to be that of the Commission. Absent evidence of such a nature, the hearing officer was correct in not imposing more requirements on the Commission selection than are contained in the statute and applicable rules. *See* Texas Workers' Compensation Commission Appeal No. 92613,

dated December 28, 1992. The selection of Dr. P was not contrary to any statute or rule and the hearing officer was correct to consider Dr. P's report under the criteria specified in Article 8308-4.26 of the 1989 Act. There was no evidence to suggest Dr. P was not fully qualified to perform the examination, that he was in any way biased, or that he otherwise rendered an improper medical opinion.

As a designated doctor selected by the Commission to assess impairment, Dr. P's opinion is entitled to presumptive weight, so long as it meets the criteria for a designated doctor's opinion, unless the great weight of other medical evidence is to the contrary. *See* Article 8308-4.26 and Rule 130.1. The decision of the hearing officer shows that he properly considered the other medical evidence, the TWCC-69 of Dr. R, and concluded that it did not constitute the great weight of the medical evidence as opposed to the designated doctor's opinion. While the word "adopted" is used in Conclusion of Law No. 2, and that word is used in the statute only in regard to a designated doctor who has been agreed upon by the parties, it is clear from the remainder of the same conclusion that the hearing officer weighed the medical evidence available. He then determined impairment under the right criteria.

The appeal did not attack the opinion of Dr. P as not valid because no TWCC-69 was used. The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 91083, dated January 6, 1992, has stated that the designated doctor's report could be valid even though not on a form specified for that purpose if it addressed the essential information required by the rules. However, as we have cautioned, avoidance of the Commission form could cause information to be overlooked or omitted. In the present case, Dr. P's report is one of the most thorough this writer has seen; it explains how tests were conducted and how the doctor used the Guides to the Evaluation of Permanent Impairment. *See* Article 8308-4.24 of the 1989 Act. Nevertheless, the doctor did not say "MMI was reached on June 9, 1992"; had the form been used it would have virtually compelled the entry of a date of MMI. He did spell out the present medical condition of the claimant in terms that meet the definition of MMI found in Article 8308-1.02(32) of the 1989 Act. (His report said, "[t]he clinical condition is not likely to improve with further active medical treatment or surgical intervention. Medical maintenance care only is warranted.") MMI was found. Had it not been found, a question of whether the report adequately met the requirements for determining MMI and impairment would have been raised. In addition, the form contains the legend, "Impairment rating shall be based on the compensable injury alone." The designated doctor's opinion does not acknowledge this limitation, but also does not appear to have considered any other injury. The adjudication process would be well served if, when the Commission receives a copy of a designated doctor's opinion without the applicable form, a copy of that opinion would be returned with a TWCC Form 69 requesting completion so that the two together would address all questions. While some blanks on the TWCC-69 were not addressed by the doctor's opinion, such as various identification numbers, such omissions, alone, do not invalidate the opinion. *See* Texas Workers' Compensation Commission Appeal No. 92127, dated May 15, 1992. With no issue raised on appeal concerning the format of Dr. P's report and since that report addresses

impairment so thoroughly, it will be considered to have adequately met the criteria for a designated doctor's report.

As has been stated in prior opinions, when an issue involving a designated doctor's report is to be considered at a contested case hearing, a copy of the order designating the doctor would be appropriate as a Hearing Officer exhibit. That order indicates action by the Commission in the adjudication process just as the benefit review conference report does. While the Commission order may assist on many issues, it should clarify whether the designated doctor was selected by the Commission or at the agreement of the parties; Article 8308-4.26(d) differentiates between the weight the designated doctor's rating or opinion will have depending on the manner of selection used.

The decision of the hearing officer is sufficiently supported by the evidence and is affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge