APPEAL NO. 92676

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 November 17, 1992, a contested case hearing was held in (city), Texas, with (hearing officer), presiding. He determined that appellant, claimant herein, reached maximum medical improvement, MMI, on May 28, 1992. Claimant appeals stating that he still has discomfort, cannot get a job, and has no means of income or medical help. Respondent, carrier herein, states that the decision should be upheld.

DECISION

Finding that the decision is supported by sufficient evidence, it is affirmed.

Claimant worked as a sander for a furniture maker in (city), Texas. Panels for desks were hung on hooks for drying in a finishing room; on (date of injury), claimant was on a ladder moving panels when he states he twisted his back, feeling pain. This hearing dealt with the issue, only, of when claimant reached MMI. All agreed that the impairment rating percentage had been resolved at the benefit review conference--that rating was 10%. The claimant disputed that MMI was reached on April 14, 1992, as set forth by his treating doctor, Dr. R. A designated doctor, Dr. K, selected by the Commission, then found MMI on May 28, 1992, with a 2% impairment. The impairment rating of Dr. K was disregarded since impairment had been resolved at the benefit review conference.

In addition to the reports of the treating doctor, Dr. R, and those of the designated doctor, Dr. K, claimant saw an orthopedic surgeon, Dr. M. Dr. R recommended Dr. M when claimant wanted another opinion. Dr. M saw claimant twice in October 1992 and said that he could not say that MMI had been reached because certain exams were pending (discogram). Carrier did not choose to pay for a discogram so one had not been done; claimant agreed that the doctor who suggested the discogram was not his treating doctor.

Claimant also testified that he had been treated in (city) after the accident and then moved back to "the valley" ((City), Texas) in July 1991. He had a CT scan in (month year) that showed mild posterior disc bulges at the L4-5 and L5-S1 levels. An MRI was taken in December 1991 and showed no herniated disc. It did show degenerative changes of posterior bony elements at L5-S1 and was characterized as unremarkable. Claimant stated that he began receiving therapy in June 1991 and continued it after moving to the valley for an added period of eight months. He said that the pain and numbness in his left leg is worse now than it was in April 1992, but he also said that there is nothing that he has today that was not present and brought to the attention of Dr. R and Dr. K. He acknowledged that he has been told he had an inflamed disc, not a herniated one. He also said that no doctor has prescribed a regimen of exercises for him to do to overcome the problem. Claimant testified that he did not believe he had reached MMI because he could not walk more than one hour, could not sit for too long, had pain when he laid down, and had seen little change during therapy. He stated that he wanted to be cured and to receive

benefits until cured, when he can work.

The claimant's testimony cannot be the basis for a finding as to MMI. MMI must be based on "reasonable medical probability." *See* Texas Workers' Compensation Commission Appeal No. 92164, dated June 5, 1992. Maximum medical improvement does not mean that in every case the claimant will be free of pain. See Texas Workers' Compensation Commission Appeal No. 92394, dated September 17, 1992. In addition, MMI does not mean that a claimant has made a complete recovery. *See* Texas Workers' Compensation Commission Appeal No. 92670, dated February 1, 1993.

The hearing officer is the sole judge of the weight of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. In this instance both the treating doctor in April 1992, approximately 11 months after the injury, and the designated doctor in May 1992, after approximately 12 months, found MMI. One other doctor only said that he could not say MMI had been reached until he did more tests. In this case an MRI and a CT scan had been done and the test requested, but not done, was a discogram. Dr. M, who asked for a discogram, did not point out what, if anything, that a discogram could provide that had not been provided by the other tests. The MRI was unremarkable and showed no herniation. The hearing officer's determination that the designated doctor's date of MMI was not overcome by the great weight of other medical evidence was sufficiently supported; the medical evidence of Dr. R was largely consistent with that of the designated doctor, and only Dr. M raised a question of an added test.

The decision and order of the hearing officer are not against the great weight and preponderance of the evidence and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge