APPEAL NO. 92695

This appeal arises under the Texas Workers' Compensation Act (1989 Act), TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992). A contested case hearing was originally held on June 30, 1992, in (city), Texas, with (hearing officer) presiding. This Panel reversed and remanded the decision of the hearing officer that the designated doctor had not filed a report of maximum medical improvement (MMI) in accordance with the rules of the Texas Workers' Compensation Commission (Commission), and thus the claimant had not reached MMI and had not been assigned an impairment rating. In remanding, we instructed the hearing officer to consider the report filed by the designated doctor, a later-filed TWCC-69, and all appropriate evidence on impairment consistent with the Appeals Panel's decision (Texas Workers' Compensation Commission Appeal No. 92384, decided September 14, 1992).

A hearing on remand was held on November 2, 1992. Upon admitting further medical evidence, the hearing officer subsequently issued a decision that the claimant had reached MMI on January 6, 1992, with a zero percent whole body impairment, based upon the report of the designated doctor appointed by the Commission. The claimant, appellant in this case, disputes the hearing officer's findings and conclusions on MMI and impairment. The respondent, employer's workers' compensation insurance carrier herein, contends that the hearing officer's decision on impairment is supported by the report of the designated doctor and reinforced by the report of claimant's treating doctor. Carrier further contends that the issue of MMI was not appealable because it had already been determined by this Panel. In the alternative, it argues that the great weight of evidence supports the MMI date assigned by the designated doctor.

DECISION

Finding the hearing officer's decision to be supported by sufficient evidence, we affirm.

Because the facts of this case are detailed in our opinion in Appeal No. 92384, *supra*, they will not be repeated here. It was undisputed that the claimant injured his left anterolateral torso in the course and scope of his employment with (employer) on (date of injury). Claimant first saw (Dr. M) in the period (month) through April 1991 then began treating with (Dr. V) in July of 1992, although Dr. V said he could not give an anticipated date claimant would reach MMI. At carrier's request, claimant was also seen by (Dr. L), who found no impairment. Thereafter, a designated doctor, (Dr. O) was appointed by the Commission. Dr. O filed a six-page narrative in which he found MMI and "no residual impairment." The hearing officer held that because Dr. O had not submitted a TWCC-69, he had not certified MMI or impairment. We reviewed the substance of Dr. O's report and found it substantially complied with the pertinent rules of the Commission, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § § 130.1 and 130.6 (Rules 130.1 and 130.6). We stated that we would have reversed and rendered a decision, except for the designated doctor's finding of "no residual impairment," which was too vague to allow us to assume it was the

equivalent of zero impairment.

At a hearing on remand, the hearing officer received into evidence two additional sets of documents: medical records from Dr. V for the period July 16, 1991 through October 19, 1992 (offered by claimant) and a TWCC-69 from Dr. O. The records from Dr. V indicated that the claimant has not significantly improved and that his list of diagnoses has grown from Dr. V's original impression at the outset of treatment.

In a letter dated October 19, 1992, Dr. V stated that "[claimant] had not reached maximum medical improvement as he still is under active treatment for lesions that are amenable to surgical treatment and further therapy and his condition is not stabilized sufficiently to warrant provision of a permanent impairment rating at this time." Dr. O's extensive report of January 6, 1992 summarized the reports of all doctors who had seen the claimant as of that date, as well as the results of objective tests performed on claimant. Dr. O examined claimant and found that claimant had reached MMI on January 6, 1992, with a zero percent whole body impairment rating.

The 1989 Act provides that a designated doctor's report, both as to MMI and impairment, shall have presumptive weight and the Commission shall base its determination on those issues on the designated doctor's report, unless the great weight of the other medical evidence is to the contrary. Articles 8308-4.25(b) and 4.26(g). The hearing officer in this case considered all the medical evidence before her and determined that the designated doctor's report was not contrary to the great weight of the other medical evidence. (Despite the fact that this Panel remanded on the issue of impairment, it was not inappropriate for the hearing officer to have a conclusion of law as to both the issues of MMI and impairment, especially since the designated doctor was appointed to determine both.) Our review of Dr. V's reports, thorough as they may be, does not lead us to conclude that the hearing officer incorrectly held that the opinion of the designated doctor was not outweighed by the other medical evidence. As we have previously held, MMI does not mean, in every case, that the worker at that point is free from pain or fully restored to his or her preinjury condition. *See* Texas Workers' Compensation Commission Appeal No. 92270, decided August 6, 1992. Upon review of the record, we are satisfied that the hearing officer's determination was not in error and was supported by sufficient evidence.

The decision and order of the hearing officer are accordingly affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge