APPEAL NO. 92726

On November 19, 1992, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer to determine whether claimant had reached maximum medical improvement (MMI). The hearing officer determined that the claimant reached MMI as of August 5, 1992. This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1991) (1989 Act).

Appellant, claimant herein, contends that the hearing officer failed to give sufficient weight to the treating doctor's opinion and requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

The sole issue decided at the CCH was "[h]as the claimant reached maximum medical improvement?"

It is undisputed that claimant while employed by (employer), the employer, sustained a compensable back injury on (date of injury). The circumstances of the accident and sequence of events are not in evidence. Claimant began seeing (Dr. S), who is the treating doctor, sometime in 1991 and has continued through November 1992. The medical evidence includes a report from (Dr. Q), the carrier's doctor, dated November 12, 1991 which gave a diagnosis of lumbo-sacral strain and x-ray of the lumbar spine which were "normal." Dr. S apparently ordered an MRI of the lumbar spine which was done on 9-23-91 with an impression of "normal lumbar spine." An electromyogram (EMG) was done on 3-30-92 and showed claimant's lumbar spine ". . .is within normal limits." Claimant was sent to (Dr. V), as the Commission's designated doctor in accordance with Article 8308-4.23, who by TWCC-69, Report of Medical Evaluation, gave a date of MMI as 8-5-92. In addition to the TWCC-69, Dr. V submitted narrative reports dated August 5, 1992 and October 5, 1992 supporting his position. The hearing officer made a finding that the report of the designated doctor is entitled to presumptive weight and that claimant reached MMI as of August 5, 1992. The claimant's position is that greater weight should be given to the treating doctor's opinion that claimant remains incapacitated and has not reached MMI, because the treating doctor "has seen him the most." The claimant also alleges he is "in no work status", and has not reached MMI. There was a minor discrepancy in that one of the treating doctor's notes was dated November 17, 1991, but the tenor of the note would indicate it should be dated November 17, 1992. The hearing officer noted this discrepancy and gave claimant an opportunity to clarify the date. Claimant attempted to but was unable to contact the doctor during the CCH. Claimant submitted a letter from Dr. S dated December 22, 1992 with claimant's appeal, whereby Dr. S confirmed that the date of the November 17th letter should have been 1992. The carrier objects to the consideration of this confirmation letter on the

basis that the Appeals Panel is limited to the record developed at the hearing and that claimant's "reliance upon new evidence in its request is improper." It is clear that the hearing officer recognized the discrepancy, allowed claimant an opportunity to clarify the date and fully considered all of the treating doctor's comments in rendering his decision. We will consider Dr. S's clarification letter for the limited purpose of confirming the hearing officer's understanding of the correct date of the November 17th letter.

Where there is disagreement between medical practitioners concerning when MMI has been reached, Article 8308-4.25 provides a mechanism where such dispute may be resolved. Succinctly, a designated doctor (Texas Workers' Compensation Commission Rule 133.2, sets forth that prior medical reports and tests are to be provided to a designated doctor) is appointed by the Commission, and unless mutually agreed on, the report of the designated doctor "shall have presumptive weight and the Commission shall base (MMI) on that report unless the great weight of the other medical evidence is to the contrary." We have held in the past that the "unique position" the designated doctor's report occupies requires more than a mere balancing of the evidence, or even a preponderance of the evidence that can outweigh such a report. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. The only other medical evidence in the record indicating a different date of MMI was Dr. S's notes. We agree with the hearing officer's determination that the treating doctor's opinion in this case does not outweigh the presumptive weight of the designated doctor's opinion, as supported by the carrier's doctor.

As to claimant's contention he is unable to work and is still in pain, we have also previously held that the fact that an employee may have reached MMI does not mean, in every case, that the individual is free of pain or fully restored to his or her preinjury condition. *See* Texas Workers' Compensation Commission Appeal No. 92270, decided August 6, 1992.

We accordingly find that the hearing officer did not err in holding that the great weight of the other medical evidence was not contrary to the designated doctor's MMI date and the hearing officer's decision that finds MMI was reached on the date assigned by the designated doctor was correct.

The hearing officer's decision is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge