APPEAL NO. 93056

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). A contested case hearing was held in (city), Texas, on December 17, 1992 to decide the issue of whether the claimant, who is the appellant in this action, had reached maximum medical improvement (MMI). The hearing officer, held that, pursuant to the report of the designated doctor, the claimant reached MMI on March 31, 1992. The claimant requests our review of the hearing officer's decision because two doctors do not agree with the designated doctor's finding of MMI. The claimant also questions why she is not able to get further surgery on her back or, in the alternative, to have another myelogram done.

DECISION

Upon review of the record in this case, we affirm the decision and order of the hearing officer.

The claimant was employed by (employer), as assistant manager. She testified that on (date of injury) she injured her back while hanging up clothes, an activity which required her to remove items from a bin and twist her body to put them on racks. The carrier accepted liability for this claim and claimant has been treated by several doctors.

Claimant first saw her family doctor, who referred her to Dr. A. She had an MRI on December 31, 1991 and a myelogram on January 7, 1992, both of which were read as normal. Claimant said she stopped treating with Dr. A after the myelogram, because he could not tell her why she was still hurting. She next saw Dr. S, who recommended physical therapy and ordered a discogram, which was negative. Dr. S subsequently referred her to Dr. S, who in turn referred claimant to Dr. M in June of 1992. Claimant said Dr. M told her her myelogram had been misread and that she needed surgery to correct a problem at L4-5.

Pursuant to the carrier's request, the claimant was examined on July 14th by Dr. S, who determined that she reached MMI on July 15th with a 0% impairment rating. On August 17th the Texas Workers' Compensation Commission ordered that the claimant be examined by a designated doctor, Dr. S. The designated doctor's report, dated September 3rd, stated that the claimant reached MMI on March 31, 1992, with a 4% whole body impairment. On December 11th Dr. S completed a Form TWCC-69 stating his opinion that the claimant had not reached MMI. Dr. B, who had read the claimant's myelogram in conjunction with Dr. M, also completed a TWCC-69 dated December 15th stating that the claimant had not reached MMI because her condition could be improved through laser surgery.

The designated doctor's narrative report shows he examined and tested the claimant and reviewed her prior medical reports, including the myelogram and CT scan which he termed "non-significant." However, a December 2nd letter from Dr. M states he reviewed

claimant's myelogram in conjunction with Dr. Bl and that both doctors believed it to show the claimant had a disc bulge at L4-5. (An August 31st letter from Dr. B found her other studies, including MRI and CT scan, to be "not all that impressive.") Both doctors believed claimant's condition could be alleviated through laser percutaneous discectomy. Dr. M also stated his opinion that the claimant had not reached MMI and that the impairment ratings of 0% and 4% to be "grossly inadequate," stating that "page 80 of the AMA book" rates this condition as 7% which "does not even include the range of motion which also has to be taken into consideration for spinal deficits."

Also made part of the record were written reports from doctors who were requested to provide a second opinion (Dr. S) and third opinion (Dr. P) on spinal surgery following the recommendations of Drs. B and M. Dr. S concluded, based on examination and a review of claimant's medical records including the myelogram, that the claimant would not be improved by surgery. Dr. P noted that the myelogram revealed a minimal ventral impression of the thecal sac at the L4-5 level, but stated that "I do not see a surgically remedial lesion in her lumbar spine. . .chances of surgery helping her would be less than twenty to thirty percent. . .the chances of surgery making her worse would be significant under these circumstances. Under these circumstances, I could not, in good conscience, recommend surgery for this lady."

Both the claimant and her husband testified at the hearing as to her continuing pain, which prevents her from doing everyday tasks such as housekeeping and driving.

The 1989 Act defines MMI as the earlier of (A) the point after which further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated, based on reasonable medical probability; or (B) the expiration of 104 weeks from the date income benefits begin to accrue. Article 8308-1.03(32). Subsection (A) is applicable to the facts of this case. In addition, the Act provides that if the Commission selects a designated doctor, the report of the designated doctor shall have presumptive weight, and the Commission shall base its determination on MMI and impairment rating on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. Articles 8308-4.25(b), 4.26(g). We have previously described the "unique position" that a designated doctor's report occupies under the Texas workers' compensation system, and the fact that to overturn such report requires more than a mere balancing of the evidence. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Further, only the great weight of the other <u>medical</u> evidence can overcome this presumptive status. Texas Workers' Compensation Commission Appeal No. 92570, decided December 14, 1992. Upon review of the record in this case, we cannot say that the hearing officer erred in determining that Dr. S finding of MMI was not overcome by the great weight of the other medical evidence. Although the other medical evidence included the opinion of three doctors that claimant had not reached MMI because her condition could be improved by surgery to correct a bulge they observed from her

myelogram, there was much evidence outside of the designated doctor's report to counter those opinions. The carrier's doctor also found the claimant to have reached MMI. Objective studies--including MRI, discogram, CT scan, and EMG--were found to be negative, with some dispute over the results of the myelogram. Finally, two doctors recommended against the surgery advised by Drs. M and B, specifically because they did not believe it would improve the claimant's condition. Considering all the foregoing, we cannot hold that the "great weight" of the medical evidence is contrary to Dr. S opinion as designated doctor.

We have previously held that the fact that an employee may have reached MMI does not mean, in every case, that he or she is free of pain or fully restored to his or her preinjury condition. Texas Workers' Compensation Commission Appeal No. 92270, decided August 6, 1992. As this panel has said, when a doctor finds MMI and assesses impairment he agrees, in effect, that the injured worker is likely to continue to have effects, and possibly pain, from the injury; however, he has determined that there will likely be no further substantial recovery from the injury. Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993. Reaching MMI also does not necessarily mean that the claimant will no longer be eligible for any further medical benefits involving his or her injury. However, claimant's questions on appeal concerning further tests or medical treatment are not an issue for this panel, but should more properly be addressed to this Commission's Division of Medical Review.

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge