APPEAL NO. 93095
FILED MARCH 19, 1993

Under the provisions of 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 on December 29, 1992. He concluded that the designated doctor's report certifying maximum medical improvement (MMI) was valid, sufficiently unambiguous, and entitled to presumptive weight and that it was not contrary to the great weight of other medical evidence. He determined, in accordance with the report, that the appellant (claimant) reached MMI from his compensable injury of _____, on May 15, 1992 with a 7% impairment rating. Claimant urges, in essence, that the designated doctor's report was not valid, that the other medical evidence outweighed it, and that the respondent (carrier) wrongfully refused to authorize and pay for some of his medical treatment. Claimant asks that we affirm (and presumably reverse the hearing officer's decision) the recommendations and comments of the benefit review officer (who recommended that the MMI was not valid). Carrier requests that the decision of the hearing officer be affirmed.

DECISION

Finding potential error in the designated doctor's rendering of MMI and an impairment rating and consequently in the hearing officer's decision, we reverse and remand.

There was no dispute concerning the compensability of the claimant's injury, which occurred on _____ when a roll of fabric fell on him. He worked the remainder of that day and the next day but the pain increased and the following day he went to an emergency room, had an x-ray, and was referred to a Dr. L. A CT scan was subsequently performed which revealed degenerative osteoarthritis in the right SI area but no herniation. He was treated conservatively and subsequently referred to the (pain center) where he decided against recommended epidural steroid and facet injections. He saw another doctor for a second opinion, and an MRI and bone scan were performed: the bone scan revealed a hot spot on the right femoral shaft and raised a question concerning a lytic lesion. The claimant was seen by several other physicians over the next several months. An EMG was performed with normal results and an impression given of chronic back pain and normal neurological examination except for absent reflexes. He was continued under conservative care for back strain, and continued physical therapy.

The claimant was seen by a carrier selected doctor, Dr. La, on May 15, 1992, who prepared a Texas Workers' Compensation Form 69, Report of Medical Evaluation (TWCC-69) certifying MMI on "5-15-92" with a 5% impairment rating. Another medical report offered in evidence by the claimant shows that a Dr. M evaluated the claimant and indicated an MMI date of "8/24/92" with a 5% impairment rating. Subsequently a

Commission designated doctor, Dr. O, submitted a TWCC-69 which indicated on its face an MMI date of "8/28/92" with a 7% impairment rating and an attached report which indicated that "[i]n all medical probability, he would have reached MMI as of May 15, 1992, when he was evaluated by (Dr. La) because it does not appear that he has improved since that date." A subsequent letter from Dr. O to the carrier refers to an MMI date of May 15th. Dr. O's report, and other back-up data introduced by the claimant, indicates that other persons performed various tests including motion tests and that an examination of the claimant was performed by a doctor other than Dr. O. The claimant testified that one of the reports refers to him as a female, that the report shows conflicting dates, and that he does not believe Dr. O's report is valid. He testified, and is not rebutted or contradicted on the matter, that the reason Dr. O's report is invalid is "because he states that 'we' looked at this and 'we' looked at that when he didn't even do the examination--he didn't even lay his hands on me."

It is this latter aspect that concerns us and causes our remand. Clearly, and we have so held, a designated doctor can appropriately consider and rely on tests, exams, data, medical reports, etc. performed by others in arriving at his final evaluation in a given case. *See generally* Texas Workers' Compensation Commission Appeal No. 92275, decided August 11, 1992; Texas Workers' Compensation Commission Appeal No. 92126, decided May 7, 1992. Of course, when he does so, he places his imprimatur on such sources and in considering them either adopts, rejects or distinguishes them for his own evaluation purposes. However, as a part of the very important process of certifying MMI and impairment ratings, a designated doctor must himself also examine the injured party and not just review records and totally rely on examinations by others. Article 8308-4.25 and 4.26 provide in pertinent part that if a dispute exists as to MMI or impairment rating, "the commission shall direct the employee to be examined by a designated doctor." (emphasis added). The commission rules are consistent with the necessity for an examination of the injured employee. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.3 (TWCC Rule 130.3). We have repeatedly noted the important and unique position occupied by the designated doctor under the 1989 Act. Texas Workers' Compensation Appeal No. 92555, decided December 2, 1992; Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also stated that where there are problems concerning a report of a designated doctor, the hearing officer can appropriately effectuate corrective action. Texas Workers' Compensation Commission Appeal No. 93045, decided March 3, 1993. We observed "[i]t is essential that the Commission have a designated doctor program that is credible, fair and widely accepted. . . ." in Texas Workers' Compensation Commission Appeal No. 93062, decided March 1, 1993. We believe, and conclude the law requires, that a thorough evaluation and appropriate examination is essential to the designated doctor program. The recently issued TWCC ADVISORY 93-04, dated March 9, 1993, emphasizes this and provides some guidance in pertinent part:

All evaluations under the Act are extremely important to the appropriate delivery of benefits. However, the evaluation of maximum medical improvement (MMI) and the rating of impairment are particularly important because these determinations impact income benefits. For this reason, a doctor must take extra care to ensure that the evaluation and rating process is performed consistent with sound medical practice and in accordance with the "Guides". (Guides to the Evaluation of Permanent Impairment, Third Edition, 2nd Printing, published by the American Medical Association). Further, the Commission encourages a doctor performing an evaluation to explain to the worker the evaluation process as identified in the "Guides".

An evaluation or certification under the "Guides" and the Act must include a physical examination and evaluation by the doctor. Although the "Guides" provide that any knowledgeable physician or any other knowledgeable person may compare the clinical findings on a particular patient with the criteria in the "Guides", a doctor must conduct a physical evaluation and is responsible for the integrity of the evaluation process. This means the doctor must evaluate the complete clinical and non-clinical history of the medical condition(s), perform an examination of the injured worker, analyze the medical history with the clinical and laboratory findings, and assess and certify an impairment rating according to the Act, Commission Rules, and the "Guides".

As indicated, it appears from the evidence of record in this case that an examination of the claimant by Dr. O may well not have been performed: the report itself does not shed light one way or the other. This matter needs to be developed in the record and if corrective action is indicated, it must be accomplished so that a valid MMI date and impairment rating can be established. Although there are other inaccuracies (as pointed out above and testified to by the claimant) in the designated doctor's report and documentation, we do not hold they are necessarily fatal; however, we do observe that the standard of "sufficiently unambiguous" applied to a designated doctor's report is hardly the one to emulate. The case is returned for further consideration not inconsistent with this opinion and development of evidence as deemed necessary for a proper disposition of this case.

A final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Article 8308-6.41. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge