APPEAL NO. 931024

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.). Following a contested case hearing held in (city), Texas, on October 5, 1993, hearing officer (hearing officer) determined that the claimant reached maximum medical improvement (MMI) on March 22, 1993, with an impairment rating of five percent, as found by the Texas Workers' Compensation Commission-appointed designated doctor. The appellant, hereinafter claimant, seeks our review of this decision based on the fact that he is still in pain and having problems from his injury, and that his treating doctor is better qualified to judge his impairment. The respondent, hereinafter carrier, argues that the hearing officer's decision and order should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The evidence showed that claimant suffered a compensable injury as the result of a motor vehicle accident on (date of injury). His treating doctor was (Dr. H), who prescribed conservative treatment including medication, physical therapy and work hardening. A CT scan of the lumbar spine and lumbar spine series were negative. On May 10, 1993, Dr. H completed a Report of Medical Evaluation (Form TWCC-69) certifying that the claimant had reached MMI on March 22, 1993, with a 10% impairment rating.

On June 28, 1993, the claimant saw (Dr. B), the designated doctor appointed by the Texas Workers' Compensation Commission (Commission) to determine the claimant's impairment rating. Dr. B issued a report which also found MMI to have been reached on March 22, 1993, but with a five percent impairment rating. The claimant contended at the hearing that Dr. B's report was not accurate, and that his own doctor, Dr. H, was in a better position to evaluate him.

The hearing officer found that the designated doctor's determination of MMI and impairment was not contrary to the great weight of the other medical evidence, and thus that it was entitled to presumptive weight. This was pursuant to the 1989 Act, which provides that where a designated doctor is chosen by the Commission, the report of that doctor shall have presumptive weight and the Commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. Section 408.125(e).

This panel has commented many times upon the "unique position" and "special presumptive status" the designated doctor's report is accorded under the Texas workers' compensation system, and the fact that no other doctor's report, including that of the treating doctor, is entitled to such deference. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. Further, to overturn a designated doctor's report requires more than merely a balancing of the evidence. Appeal No. 92412,

supra. In this case, the medical evidence does appear to be fairly balanced.

The claimant contended at the hearing and on appeal, however, that Dr. B only required him to bend and reach but did not require a heel/toe walk nor pinprick tests, as mentioned in Dr. B's report. The report states with regard to walking, "[h]eel/toe walk - he would not try toe walk indicating this was painful and he only did slight heel walk indicating this was painful," which appears to be consistent with claimant's testimony. Dr. B further wrote, "[p]in prick showed decreased sensation throughout the left foreleg and foot with no discrete pattern." Claimant said he had no such test, but acknowledged he did not know what a pinprick test consisted of.

Finally, claimant contends in his appeal that he continues to suffer pain as a result of his injury. This fact is also reflected in Dr. B's report. We have held, however, that the fact that a claimant is found to have reached MMI, which is a necessary prerequisite to an impairment rating, does not mean that he will be pain-free or completely restored to his pre-injury condition. Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993.

Upon our review of the evidence, we cannot say that the hearing officer erred in giving presumptive weight to the impairment rating of the designated doctor. The hearing officer's decision and order are thus affirmed.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Gary L. Kilgore
Appeals Judge