APPEAL NO. 931048

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.) (1989 Act). A contested case hearing was held in (city), Texas, on October 21, 1993, before hearing officer (hearing officer) The appellant, claimant herein, seeks our review of the hearing officer's determination that the claimant reached maximum medical improvement (MMI) on November 8, 1992, with a zero percent impairment rating, as found by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant's appeal points to language in certain diagnostic studies and in doctor's reports, and states that she continues to have back and leg pain. The respondent, hereinafter carrier, cites numerous Appeals Panel decisions concerning the reports of designated doctors, and urges that the hearing officer's decision and order be affirmed.

DECISION

We affirm the decision and order of the hearing officer.

The claimant, who was employed as a nurse's aide by (employer) at the time of her (date of injury), injury, suffered a back injury while lifting a patient. She was originally seen by her family doctor, (Dr. D), who referred her to (Dr. V), an orthopedic surgeon; claimant indicated her dissatisfaction with Dr. V who, she said, kept telling her she was overweight and was not wearing the proper shoes. Records from Dr. V noted that x-rays and a bone scan were normal; that a CT scan showed apparent bulging of a disc but an MRI to rule out a herniation was normal. Dr. V prescribed medication and recommended conservative treatment, including symptomatic care, exercise, and therapy. He certified that claimant reached MMI on September 5, 1991, with a zero percent impairment rating.

Claimant said she changed treating doctors, to (Dr. C), who she continued to see at the time of the hearing. Medical reports in evidence show claimant began treating with Dr. C in October 1991 and that he referred her for chiropractic treatments. (The chiropractor, (Dr. F), apparently referred her to (Dr. P), who released her to light duty work, which claimant said she was unable to do while also going to physical therapy. On April 28, 1992, Dr. P wrote that he had no "disability rating" to give due to failure of patient follow-up, but that he did not expect "any permanent disability.")

Dr. C's reports showed continued complaints of back pain with radiation into the right leg. On April 8, 1992, he stated that claimant's lumbar myelogram was "questionable for small herniation." On June 17, 1992, he wrote that claimant had had a discogram with CT which was essentially normal, but that a myelogram with CT "showed some mild distortion of the dura sac at L5-S1 on the left and central portion of the nerve root." On July 15, 1992, Dr. C stated that claimant had undergone a lumbar MRI because of equivocal results obtained from the discogram and myelogram with CT, but that the results were normal. On August 14th, Dr. C wrote that he had had difficulty finding out the source of claimant's problem, and on December 23rd he administered a facet joint injection, which provided temporary relief.

Dr. C had referred claimant to (Dr. VE), who wrote on October 16, 1992, that one imaging study showed a mild disc bulge at L5-S1, and stated his impression that the disc bulge was causing a mild facet arthropathy and pain. He recommended stabilization exercises. Dr. VE also saw the claimant on February 3, 1993, found limited flexion and extension but no neurological deficits, and stated his impression that she continued to have degenerative disc disease at L4-L5. On April 20, 1993, Dr. C noted the result of Dr. VE's consultation, stated that claimant's "SEP" testing showed radiculopathy, and recommended a second discogram. At the hearing, the claimant said she had not had this procedure because the carrier would not approve it. Dr. C performed manipulation under anesthesia on claimant on October 5, 1993. Claimant said Dr. C had not found she had reached MMI, and had recently told her she would always be in pain.

On November 6, 1992, the claimant was seen by (Dr. CI) at the carrier's request. Dr. CI summarized claimant's studies as being normal, and stated claimant had no abnormal objective findings on examination, which included flexion and extension and straight leg raising. On an undated Report of Medical Evaluation Dr. CI certified MMI as of November 8, 1992, with a zero percent impairment rating.

The claimant saw (Dr. T), the designated doctor appointed by the Commission, on February 22, 1993. Dr. T also noted the negative results of claimant's studies, summarized her examination, and concluded that the claimant had "subjective complaints with no objective evidence of any structural injury to the intervertebral disc. . . . Even if she did suffer an annular tear or other such injury, she has had sufficient conservative care and I agree with [Dr. CI] that she achieved maximal (sic) medical improvement on 11/08/92 with a zero percent whole person impairment."

The claimant on appeal takes issue with the hearing officer's findings that the designated doctor's Report of Medical Evaluation is a valid certification that claimant reached MMI on November 8, 1992, with a zero percent impairment rating, and that the great weight of the other medical evidence is not contrary to Dr. T's report.

The 1989 Act 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 determination of MMI and the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. Sections 408.122(b); 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 a 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.

The studies and reports cited by claimant in her appeal, and noted hereinabove, raised the possibility that a bulging disc was the source of claimant's complaints. It is equally true, however, that the bulk of claimant's studies were read as normal, including

some (such as the lumbar MRI following the myelogram with CT scan) which were performed after prior tests indicated possible negative findings. While it is also true that Drs. C and VE found limited motion, the reports of Dr. CI and the designated doctor ultimately did not. As we have held, to overturn a designated doctor's report requires the great weight of the other medical evidence to be against it, which involves more than a mere balancing of the evidence. *See* Appeal No. 92412, *supra*.

Regarding claimant's very real complaints of persistent pain, we addressed a similar concern in an earlier decision, Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993:

> It has become clear that many claimants do not understand how they can reach "maximum medical improvement" when they still continue to hurt and suffer from an injury. "Maximum medical improvement" appears to mean complete recovery to the ordinary person. But that is not what it means for purposes of workers' compensation benefits. That term means . . . the point at which further material recovery or lasting improvement can no longer be reasonably anticipated, according to reasonable medical probability. When the doctor finds MMI and assesses an impairment, he agrees, in effect, that the injured worker is likely to continue to have effects, and quite possibly pain, from the injury. However, he has determined, based upon his medical judgment, that there will likely be no further substantial recovery from the injury (citation omitted).

Upon our review of the record, we find no error in the hearing officer's finding that claimant's date of MMI and impairment rating were those given by the designated doctor. We accordingly affirm the hearing officer's decision and order.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge