APPEAL NO. 931060

On October 13, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of 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*.). The issues at the hearing were maximum medical improvement (MMI) and impairment rating. The hearing officer determined that the appellant (claimant) reached MMI on January 8, 1993, with a two percent impairment rating as reported by (Dr. V), the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The hearing officer decided that the claimant is entitled to impairment income benefits for six weeks (three weeks for each percentage of impairment). The claimant disagrees with the hearing officer's decision. The respondent (carrier) responds that the decision is supported by the evidence.

DECISION

The decision of the hearing officer is affirmed.

The parties stipulated that the claimant sustained a back injury which arose out of and in the course and scope of his employment with his employer, (employer), on (date of injury). The claimant testified that he was injured when he twisted his back carrying plywood up a stairway.

An MRI scan of the claimant's lumbar spine done on April 5, 1992, revealed no significant abnormalities. A lumbar myelogram done on July 13, 1992, revealed mild or minimal spondylosis and minor or mild degenerative facet disease.

The claimant's treating doctor, (Dr. D), initially diagnosed lumbago and later diagnosed chronic pain syndrome. The claimant underwent several months of treatment with Dr. H, a chiropractor.

At the request of the carrier, the claimant was examined by (Dr. S) on January 8, 1993. In a Report of Medical Evaluation (TWCC-69) Dr. S certified that the claimant reached MMI on January 8, 1993, with a zero percent impairment rating.

Dr. D, the claimant's treating doctor, certified in a TWCC-69 that the claimant reached MMI on January 29, 1993, and assigned the claimant a 29% impairment rating.

The Commission selected Dr. V as the designated doctor to determine whether MMI had been reached and the claimant's percentage of impairment. Dr. V examined the claimant on March 8, 1993, and in a TWCC-69 certified that the claimant reached MMI on January 8, 1993, with a two percent impairment rating. Dr. V provided a narrative report detailing his findings. In a letter dated June 18, 1993, Dr. D expressed disagreement with the impairment ratings assigned by Drs. S and V.

The claimant disputes the hearing officer's finding that the report of Dr. V is not

contrary to the great weight of other medical evidence and urges us to give greater weight to the report of Dr. D. Although Section 410.202(c) provides that the request for appeal shall clearly and concisely rebut the decision of the hearing officer on each issue on which review is sought, the claimant fails to point out how the great weight of the medical evidence is contrary to the report of the designated doctor.

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 medical evidence is to the contrary. Sections 408.122(b) and 408.125(e). We have commented many times upon the "unique position" and "special presumptive status" the designated doctor's report is accorded under the 1989 Act, 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. To overcome the presumptive weight accorded to the report of the designated doctor requires more than a preponderance of the medical evidence; it requires the great weight of the other medical evidence to be contrary to the report. Appeal No. 92412, *supra*. We have also held that a date of MMI may be certified as having been reached at a point in time prior to the time the designated doctor evaluates the claimant when medical records sufficiently support that finding. Texas Workers' Compensation Commission Appeal No. 93674, decided September 17, 1993.

Having reviewed the record, we conclude that the hearing officer's findings, conclusions, and decision are sufficiently supported by the evidence and are not against the great weight and preponderance of the evidence.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge