APPEAL NO. 93174

On January 19, 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. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). The appellant (claimant herein) sustained a compensable injury on (date of injury). The issues at the hearing were whether the claimant reached maximum medical improvement (MMI), and what is the claimant's impairment rating. Based on the report of the designated doctor, the hearing officer determined that the claimant reached MMI on November 2, 1992, with a zero percent impairment rating. The claimant disagrees with the decision of the hearing officer. The respondent (carrier herein) responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

The claimant testified that he hurt his neck and upper back at work on (date of injury). Dr D., a chiropractor, has been treating the claimant and sent him for physical therapy. Dr. M referred the claimant to Dr. O, who gave the claimant "trigger point injections" for pain relief. Dr. M also referred the claimant to Dr. V, whose impression after an electromyography (EMG) was performed was right C7 nerve root involvement and myofascial pain syndrome.

On August 13, 1992, Dr. R, at the request of the carrier, examined the claimant and filed a Report of Medical Evaluation (TWCC-69) in which he certified that the claimant had reached MMI on August 13, 1992, with a zero percent whole body impairment rating. In a narrative report, Dr. R noted that x-rays of the claimant's cervical spine and thoracic spine were normal, that he has complete range of motion of his cervical spine, that he has no weakness on manual motor testing, that he is neurologically intact in both upper extremities, and that he is not a candidate for surgery. Dr. R suggested that all chiropractic care cease and that the claimant be placed into a work rehabilitation program. He also noted that from time to time, the claimant may need additional injections (apparently referring to trigger point injections given by Dr. O) for symptomatic relief.

On November 2, 1992, the claimant was examined by Dr. R., who is the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In a Report of Medical Evaluation (TWCC-69), Dr. Reddy certified that the claimant reached MMI on November 2, 1992, with a zero percent whole body impairment rating. Dr. R's narrative report which accompanied the TWCC-69 indicates that he gave the claimant a physical examination, that x-rays of the claimant's cervical, dorsal, and lumbar spine were normal, that he considered the claimant's EMG report, that reports on a CAT scan of the claimant's cervical spine and dorsal spine showed no evidence of disc

herniation, and that the claimant had full range of motion. Dr. R's impression of the claimant's condition was chronic myofascial syndrome which he did not think would get better, and he suggested that the claimant be treated with anti-inflammatory medication and exercise. He did not think that the claimant was a surgical candidate.

In a letter dated January 7, 1993, the claimant's treating doctor, Dr. M, stated that the claimant had an impairment rating of six percent based on specific disorders of the spine and range of motion impairment. Dr. M did not indicate whether the claimant had reached MMI.

Pursuant to Articles 8308-4.25(b) and 8308-4.26(g), the report of a designated doctor selected by the Commission has presumptive weight on findings of MMI and impairment rating, and the Commission must base its MMI and impairment rating determinations on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. Based on the report of the designated doctor, Dr. R, the hearing officer determined that the claimant reached MMI on November 2, 1992, with a zero percent impairment rating, and further determined that the great weight of the other medical evidence is not contrary to the opinion of the designated doctor. Having reviewed the evidence of record, we conclude that the hearing officer's determinations are supported by sufficient evidence and are in accordance with the applicable provisions of the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; and Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Both the designated doctor and Dr. R concluded that the claimant has reached MMI with a zero percent impairment rating. Only Dr. M gave a differing opinion as to impairment rating.

We do not find merit in the claimant's assertion that Drs. R and R did not give him thorough examinations, because the narrative reports of those doctors show otherwise. At the hearing the claimant urged, as a basis for disregarding the reports of Drs. R and R, that he still has some pain. We have previously observed in Texas Workers' Compensation Commission Appeal No. 92394, decided September 17, 1992, that MMI does not mean that in every case the claimant will be free of pain. *See also* Texas Workers' Compensation Appeal No. 92670, decided February 1, 1993.

The claimant also complains on appeal, as he did at the hearing, that the carrier has not been paying certain medical expenses. We advise the parties that pursuant to Article 8308-4.61(a), an injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed. The Appeals Panel stated in Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992, that:

. . . medical benefits have not necessarily ceased just because maximum

> medical improvement has been reached. *See* Texas Workers' Compensation Commission Appeal No. 91125 [decided February 18, 1992]. Medical benefits do not have to cure or promote added recovery of an injury; they may also relieve the effects of the injury. Article 8308-4.61(a)(1) of the 1989 Act. Article 8308-4.68 then provides the mechanism for a carrier to dispute either the amount or the entitlement to medical benefits when it chooses not to pay a health care provider. That article also provides that the carrier shall report why payment for health care should not be made and allows an Administrative Procedure and Texas Register Act hearing under Article 8308-8.26(d) of the 1989 Act.

Finding the hearing officer's determinations to be supported by the evidence and in accordance with the applicable provisions of the 1989 Act, we affirm his decision.

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Robert W. Potts
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Philip F. O'Neill
Appeals Judge