APPEAL NO. 93207

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held in (city), Texas, on February 18, 1993, (hearing officer) presiding. In response to the stated issues the hearing officer found that the claimant reached maximum medical improvement on August 20, 1992, with a four percent impairment rating, as determined by the designated doctor. The appellant, hereinafter claimant, contends the hearing officer's decision is not supported by sufficient credible evidence because the designated doctor's report does not correctly identify the claimant's injury. The respondent, hereinafter carrier, contends the claimant's argument is based upon a selective review of the record, but says that the report supports the hearing officer's determination.

DECISION

Determining a need for further consideration and development of evidence under the particular circumstances of this case, we reverse and remand.

The claimant, who was employed by (employer), testified that she began experiencing arm and neck pain and numbness in her hands in the course and scope of her employment. Her date of injury was on or about October 17, 1991. The claimant said she first saw (Dr. M), who referred her to (Dr. T) for an EMG and cortisone shots. (Records from these doctors were not in evidence, except as otherwise noted.) He then referred her to (Dr. S), an orthopedic surgeon. Dr. S's report of December 16, 1991, stated that her EMG apparently demonstrated bilateral carpal tunnel syndrome (CTS), but that he did not have that report, nor a thoracic spine MRI which had been performed. Dr. S recommended further testing, including a cervical spine MRI, bilateral shoulder arthrograms, and a cervical spine series. As of the date of his report, Dr. S said, "I definitely see that [claimant] has some signs of impingement to the left shoulder, some objective evidence of [CTS] bilaterally but my main concern is that she may have a complicating factor of thoracic outlet compression."

Because the claimant said she wanted to see a neurologist, Dr. S referred her to (Dr. SN), whose March 23, 1992 report referenced the studies Dr. S had ordered. Dr. SN stated that the etiology of claimant's upper extremity pain was not clear, and said "there may be a component of carpal tunnel compression but this is not supported by the sensory findings." He proposed to review the claimant's EMG and nerve conduction studies and to obtain a thyroid profile. In a brief "To Whom It May Concern" letter of October 8th, Dr. SN stated, "EMG and NCS do not exclude the diagnosis of [CTS]. That diagnosis is a clinical one."

On April 14th, following receipt of Dr. SN's report, Dr. M wrote that claimant had shown no improvement in her symptoms; that "extensive evaluation" of her cervical spine, shoulders, and upper extremities "has found to date only some electrodiagnostic evidence of [CTS];" and that he did not believe her wrist problems were due to work-related causes. He also recommended a second EMG be performed.

In June of 1992 the carrier sent her to (Dr. G), a neurologist. His report summarized the results of her MRI, arthrograms, and x-rays as essentially normal. He gave his opinion that the claimant had suffered some type of low grade repetitive activity injury, but that with a negative EMG performed on May 6th, "I think we have ruled out the diagnosis of [CTS]." He found the claimant to have reached maximum medical improvement (MMI) on June 2, 1992, with a five percent impairment rating.

Approximately one month earlier, on May 8, 1992, Dr. M had also found claimant to have reached MMI; although he stated she remained "as symptomatic as previously" he said he saw no clinical signs of improvement, and he noted that Dr. SN's May 6th EMG was normal.

Dr. M completed two Reports of Medical Evaluation (Form TWCC-69). In the first, he found MMI as of May 8th, with a 39% impairment rating based upon her right and left wrists. He subsequently prepared an amended TWCC-69 wherein he assessed a five percent impairment rating. He stated that he amended the report "to reflect the original error by which I added her loss of strength to her loss of ROM."

To resolve the dispute over claimant's MMI and impairment, the Commission appointed Dr. T as designated doctor. (Although the claimant argued at the contested case hearing that Dr. T, who performed her first EMG, should not have been named as designated doctor, she did not raise this argument on appeal and it thus will not be considered in this decision.) Dr. T found the claimant to have reached MMI on August 20, 1992, with a four percent impairment rating. The TWCC-69 indicates he assessed the four percent based on his examination of claimant's cervical spine, shoulders, wrists and hands, and upper extremities.

Sometime in October of 1992 claimant began treating with (Dr. H), who she said disregarded her EMG results, and based upon her physical examination recommended carpal tunnel release surgery which was apparently performed in November (right hand) and December (left hand) 1992. The claimant stated that she had not had surgery before because Dr. M had been opposed to it, and Dr. S had believed she only had a mild case of CTS. She testified at the hearing that at the time of her first impairment rating she had symptoms of tingling fingers and arm pain into her shoulders, but that her symptoms have resolved since her surgeries.

A medical report from Dr. H admitted into evidence is set out below:

11-17-92
Patient is status post right carpal tunnel release and excision of a mass in the palm.
The patient's symptoms have improved since her surgery. We recommended that she continue wound massage. She is scheduled for her

contralateral carpal tunnel release on 12/7/92.

Apparently this patient was released with maximum medical improvement and a four percent impairment rating, however with the patient's strongly positive physical exam for carpal tunnel syndrome and a mildly to moderately positive bilateral EMG, I am at a loss as to why this evaluation was rendered. This patient definitely needed treatment in light of her physical exam and symptomatology which included bilateral carpal tunnel release. This is related to her occupation, and without question this patient deserves the follow-up necessary to see her through this episode of symptomatology.

12-7-92 **LEFT CARPAL TUNNEL RELEASE** . . . . . .

12-17-92

Patient is status post carpal tunnel release. Her paresthesias are relieved. Sutures were removed and the wounds Steristripped. She was given instructions in wound massage and the use of her splint. We will see her back in approximately four weeks.

1-7-93

Patient is status post left carpal tunnel release. The patient has some mild paresthesias in the thumb but otherwise the pain and other symptoms have resolved. Her scar looks fairly well. She has been doing her massage fairly vigorously. I think the patient can return to light duty in two weeks and full duty in six weeks.

The claimant on appeal disputes the hearing officer's findings that Dr. T's TWCC-69 is a valid certification that claimant attained MMI on August 20, 1992, with a four percent impairment rating and that the great weight of the other medical evidence is not contrary to Dr. T's report. The claimant argues that the designated doctor's report is flawed because it does not correctly identify her injury--bilateral CTS--but instead evaluates her on the basis of a cervical injury. Claimant says the report of Dr. SN demonstrates that her true condition was CTS. The carrier in its response notes that several doctors examined claimant's cervical spine as a possible basis for her problems, and notes that Dr. SN's report concludes that CTS was not supported by the sensory findings.

There is medical evidence in this case demonstrating that all doctors who saw the claimant from the time of injury until the appointment of the designated doctor expressed uncertainty as to the proper diagnosis of her complaints. For example, Dr. SN stated that "Etiology of [claimant's] upper extremity pain is not clear," and Dr. S wrote as follows: "I think this is going to be a complex case and I think that determining the actual diagnosis will be challenging. There may be more than one thing going on." Extensive tests were

performed on claimant's cervical and thoracic spine, shoulders, arms, and wrists and hands. Just prior to the time Dr. M and Dr. G rendered their determinations of MMI and impairment, a second EMG had proved negative. While Dr. M assessed MMI and impairment based upon examination of claimant's left and right wrist, Drs. G and T evaluations were broader, based upon the diagnosis existing at that time. Dr. T's TWCC-69 states that claimant had initial nerve conduction studies suggestive of CTS, but that later studies were normal. Nevertheless, he addressed claimant's cervical, shoulder, and wrist and hand ranges of motion (finding full range of motion of claimant's wrists, hands, and elbows). There is also a reference in two of the medical reports indicating the claimant unsuccessfully attempted to go back to light duty.

The 1989 Act provides that the report of a designated doctor shall have presumptive weight when the great weight of the other medical evidence is to the contrary. Articles 8308-4.25(b) and 4.26(g). We have consistently held that it requires more than a mere balancing of the evidence to overcome this special, presumptive status. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. What is of great concern to us in this particular case is the medical evidence, buttressed by other evidence, contrary to the opinion of the designated doctor which rather convincingly shows that claimant's CTS was the, if not merely a primary, compensable injury involved in this case. The unresolved conflict that we are presented with here is, namely, a finding of MMI and impairment rating based upon a diagnosis that is subsequently disputed by convincing medical evidence showing successful treatment, resolution of symptoms and ultimate restoration to work. Under such circumstances, we believe the evidence needs to be further developed to explain or rationalize this conflict which is not otherwise resolved or for which there is no apparent reason in the record and to provide some basis to conclude that a misdiagnosis has not been made, some mistake or misunderstanding has not occurred, or some correctable error has not resulted. We have recognized that a designated doctor can change or amend his opinion because of matters coming to his attention subsequent to his determination of MMI and impairment rating. Texas Workers' Compensation Commission Appeal No. 92441, decided October 8, 1992; *See also* Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993. Where a subsequent diagnosis and resulting treatment clearly resolves a compensable injury and is inconsistent with a designated doctor's earlier and seemingly inconsistent diagnosis and determination of MMI, the record should be appropriately developed to remove conjecture and speculation as much as possible. We have similarly held that great disparity in impairment ratings between similarly qualified doctors should be explained or rationalized when nothing is apparent from the record as to why there is such great disparity. *See* Texas Workers' Compensation Commission Appeal No. 93210, decided April 29, 1993.

Our review of the evidence in this case does show that other medical evidence in existence prior to the designated doctor's report shows some consistency with regard to parts of the body assessed, impairment rating (Dr. M's original 39% having been amended

to five percent) and the lack of a definite diagnosis to account for claimant's physical symptoms and test results. However, given the significant medical evidence from Dr. H, together with the corroboration provided by the resolution of symptoms following his treatment and the claimant's return to productive work, in reviewing the hearing officer's decision we are left to conjecture and speculation without some explanation or rationalization and with nothing apparent in the record upon which to resolve the matter. In this unique circumstance where a subsequent diagnosis and treatment results in the ultimate success, as it has here, further development of the evidence is appropriate.

Based upon the foregoing, we reverse and remand this case for further consideration and development of evidence as indicated above. 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:

Robert W. Potts
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. This case would arguably merit a different result had it involved a true misdiagnosis of a claimant's condition or a failure to treat a specific complaint. Here however, a treating doctor, neurologists, a neurosurgeon, and an orthopedic surgeon considered, and examined and tested claimant for carpal tunnel syndrome (CTS), as well as other conditions which could have accounted for her various symptoms. In light of negative tests and other contraindications of CTS, along with medical reports indicating that several doctors were puzzled over claimant's diagnosis and treatment, the fact that claimant some months later had surgery which she claims alleviated her symptoms does not, in and

of itself, necessarily render the designated doctor's opinion entitled to less than presumptive weight. I believe there is sufficient evidence of record to support the hearing officer's determination that the designated doctor's report was not overcome by the great weight of the other medical evidence to the contrary.

Lynda H. Nesenholtz
Appeals Judge