APPEAL NO. 93233

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). On February 22, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues acknowledged by the parties as correct were:

1. During what period has the Claimant suffered disability;

2. Has the Claimant reached maximum medical improvement; and,

3. What is the correct impairment rating?

The hearing officer determined that the appellant, claimant herein, had disability as defined by the 1989 Act commencing June 20, 1991 and continuing until July 15, 1992; reached maximum medical improvement (MMI) on July 15, 1992; and had a whole body impairment rating of zero percent. Claimant contends that the hearing officer erred in finding a date of MMI, or should have accepted the designated doctor's MMI date, and requests that we review the evidence. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

Finding that the hearing officer failed to specify how the designated doctor's opinion was overcome by the great weight of the other medical evidence, and that the designated doctor may not have considered all the relevant medical records, we reverse and remand.

Much of this case consisted of medical records. Claimant testified briefly stating that he had injured his right arm and shoulder while loading castings for (employer) on (date of injury). Claimant states he initially saw (Dr. G) (no relation), the employer's doctor, on May 13, 1991. For reasons not specified in the record and apparently not related to this injury, claimant was "laid off" on May 14, 1991. Claimant testified on cross-examination that he was subsequently in an automobile accident on June 4, 1991, where he sustained injuries to his right leg, knee and back. Claimant apparently saw (Dr. S), the treating doctor, for the first time on June 18, 1991, six weeks after his work-related injury and two weeks after his automobile accident. Carrier introduced a police report, and claimant conceded, that he had also been in another automobile accident in March 1992. An MRI was done of claimant's right shoulder on July 14, 1992. Claimant was seen by (Dr. D), carrier's MEO doctor, probably in November 1992. At a benefit review conference (BRC) on November 16, 1992, an interlocutory order dated November 16, 1992 suspended temporary income benefits (TIBs) effective 11-16-92. At another BRC on December 31, 1992, (Dr. A) was designated by the benefit review officer to resolve MMI and impairment. Claimant, at the CCH, testified he still has pain in his right arm and shoulder and is unable to work because of that pain.

Dr. G, the employer's doctor, by Initial Medical Report (TWCC-61) dated 7/10/91 and Specific and Subsequent Medical Report (TWCC-64) dated 7/10/91, found claimant sustained a contusion to his right arm and released claimant to return to work May 13, 1991.

Dr. S, the treating doctor, and a personal friend of claimant, filed a TWCC-64 dated 6-18-92, taking claimant off work and notes: "[Claimant] is still noticing pain in the neck, right shoulder area, right upper extrmity (sic). Numbness and weakness continues to be present of (sic) the right upper extremity. Cervical active range of motion is limited in all ranges." Dr. S filed additional TWCC-64s dated 7/26/91 (showing claimant unable to work), 8-5-91 (same complaints and medication), 10-17-91 (unable to work, "continue present meds"), TWCC-64 for a 8-22-91 visit, and TWCC-64 for a 10-24-92 visit (unable to work, continue present treatment), TWCC-64 dated 12-9-91 (same findings as before) and TWCC-64 dated 1-30-92 which shows: "[Claimant] continues to note severe pain in the cervical area" continues medications and that claimant "[u]nable to return to work at this time." A medical narrative report from Dr. S dated March 24, 1992 details claimant's extensive injuries due to his <u>6-5-91</u> automobile accident. By note dated 2-18-93, Dr. S states: "Patient unable to return to work at this time."

Claimant was seen in physical therapy from 6/28/91 through 8/21/91 for injury to the lumbar spine and right knee and ankle. This was presumably due to the automobile accident of June 4, 1991.

On July 14, 1992, an MRI scan of the right shoulder was done by (Dr. B) with a result that the shoulder was "within normal limits."

A report from (Dr. K) dated October 8, 1991, apparently on referral from Dr. S, finds "[a]bnormal Radial study as described." The study ". . . is consistent with a nerve root injury, as stretching over a bulging disk or a brachial plexus stretch injury." This report is not clear whether the referenced problem arose out of the June 4, 1991 automobile accident or the work-related accident of (date of injury).

Claimant apparently was seen by Dr. D, carrier's MEO doctor, on November 2, 1992. By report of that date, Dr. D found claimant had ". . . a tendency to give way on testing of the muscles of the right upper extremity but the strength is symmetrical in both upper extremities. . . ." Dr. D remarks, "[w]hy this patient was not back at work some time ago is unclear to me." In a Report of Medical Evaluation (TWCC-69), Dr. D finds MMI of 7/15/92 and zero percent impairment.

As indicated previously, a Texas Workers' Compensation Commission (Commission) designated doctor, Dr. A, was appointed to assess claimant. By narrative dated February 3, 1993 and TWCC-69 Dr. A records claimant appears to have "deliberate weakness on grip of the right hand," normal range of motion, normal MRI and "does not have any significant

radicular problem." Dr. A states: "But definitely I see no reason for him to stay off work." Dr. A finds MMI of 02-03-93 and zero percent impairment.

The hearing officer found:

10.After the Claimant injured his right arm and shoulder, he was injured in automobile accidents requiring extensive physical therapy to permit his recovery; the result of those injuries was that the Claimant was unable to work.

and concluded:

6.The Claimant reached maximum medical improvement July 15, 1992, because the great weight of the other medical evidence overcomes the presumptive weight of the report of the designated doctor, pursuant to Art. 8308-4.25(b) V.T.C.S.

The claimant appealed, contending he still has not reached MMI, still has disability and has not been released by his treating doctor. In the alternative, claimant argues the designated doctor's MMI should be adopted.

We recognize that the hearing officer is the sole judge of the weight and credibility to be given the evidence (Article 8308-6.34(e)) and this would include medical evidence. However, as we have stated numerous times, and as summarized by Chief Appeals Judge Sanders in Texas Workers' Compensation Commission Appeal No. 93105, decided March 26, 1993, ". . . it is essential that the Commission have a designated doctor program that is credible, fair and widely accepted. . . ." Article 8308-4.25(b) provides that if a dispute exists whether the employee has reached MMI, the Commission shall direct the employee to be examined by a designated doctor and if the parties are unable to agree on a designated doctor the Commission will select a designated doctor. "The report of the designated doctor shall have presumptive weight, and the Commission shall base its determination as to whether the employee has reached [MMI] on that report unless the great weight of the other medical evidence is contrary." We have repeatedly emphasized the unique position of the designated doctor under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992, and Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. In Appeal 92412, we went on to point out that to outweigh the report of a designated doctor requires more than a mere balancing of the <u>medical</u> evidence or a preponderance of medical evidence; rather such other medical evidence must be determined to be the "great weight" of the medical evidence contrary to the report. In Texas Workers' Compensation Commission Appeal No. 92522, decided November 9, 1992, we stated ". . . when a hearing officer determines that the great weight of the other medical evidence is contrary to the report of the designated doctor [the hearing officer, in the decision should], detail the evidence relevant to the issue in

consideration, clearly state why the great weight of the other medical evidence is contrary to the report of the designated doctor, and state in what regard the contrary evidence greatly outweighs the designated doctor's report." We do not believe that this was done in this case. The hearing officer merely recites, in Conclusion of Law No. 6, that the great weight of the other medical evidence overcomes the presumptive weight of the report of the designated doctor. The hearing officer fails to detail the evidence or do an analysis how the carrier's MEO doctor's opinion greatly outweighs the designated doctor's report. It would appear from reading the decision that the hearing officer summarily rejected the designated doctor's opinion as to MMI merely because she did not agree with it. We do not see where the hearing officer evaluated the medical evidence, as we have required, to overcome the presumptive weight uniquely accorded to the designated doctor's opinion. Mere recitation that the designated doctor's opinion has been overcome by the great weight of other medical evidence to the contrary, without any analysis or explanation of how that conclusion was reached, is insufficient to show the great weight of other medical evidence was indeed to the contrary.

In reviewing the designated doctor's report, it is unclear whether Dr. A was able to review all of claimant's medical records. Apparently, Dr. A had Dr. S's records, Dr. D's evaluation and the July 1992 MRI of the shoulder. Dr. A states he was ". . . not able to review x-rays of that shoulder or arm. He [claimant] brought some neuro-diagnostic studies done by a [Dr. K], of which I have no copy of." The hearing officer may wish to ensure that the designated doctor has all the pertinent medical records available for his consideration and/or may wish to pose some additional questions of the designated doctor to as to how he arrived at his assessment.

Having reviewed the record and the decision, we are unable to clearly discern how the hearing officer arrived at her conclusion that the great weight of the other medical evidence was contrary to the report of the designated doctor. We reverse the decision of the hearing officer and remand for further development of the evidence, as appropriate, and for consideration not inconsistent with this decision.

Pending resolution of the remand, 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 8308-5.41. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge