APPEAL NO. 93238

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on January 6, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) reached maximum medical improvement (MMI) on July 1, 1992 with an 11% whole body impairment rating. The claimant appeals only the impairment rating and urges that a rating of 16% as assessed by a (Dr. W), who claimant refers to as "the treating doctor," be affirmed. Respondent (carrier) asks that the decision be affirmed.

DECISION

Determining there is sufficient evidence to support the findings and conclusions of the hearing officer, his decision is affirmed.

Two issues were in dispute at the contested case hearing: (1) whether claimant had reached MMI; and, (2) if so, what was the claimant's impairment rating. The claimant testified and stated he was still in pain and needed further medical treatment and therefore had not reached MMI. Pursuant to relevant medical records, the hearing officer determined that MMI was reached on July 1, 1992, and the issue has not been appealed. Therefore, we affirm that portion of the hearing officer's decision without further discussion. Regarding the issue of impairment rating, there were several ratings assigned by several doctors. A carrier's doctor determined a 0% rating, a designated doctor (Dr. R) determined a 7% rating, a doctor who practices with the designated doctor at the (clinic), (Dr. C) determined an 11% rating, and a chiropractic doctor, Dr. W, rendered a 16% rating. Although the appeal refers to Dr. W as the treating doctor, this is not borne out by the record. Rather, it is clear that the claimant was referred to Dr. W by his treating chiropractor for the sole purpose of an impairment rating. When asked if Dr. W treated him, the claimant responded "no." In any event, the hearing officer did not give presumptive weight to the designated doctor's (Dr. R) impairment rating because there was evidence from the claimant that Dr. R did not perform any range of motion measurements (claimant's injury was to his back) and evidence from Dr. C indicating that Dr. R did not properly utilize the American Medical Association Guides to the Evaluation of Permanent Impairment, Third Edition (AMA Guides), in assessing his rating. The matter of whether the great weight of the other medical evidence was contrary the designated doctor's report (Article 8308-4.26(g), as found by the hearing officer, has not been appealed by either party. Therefore, although we have repeatedly observed that the opinion of a designated doctor occupies a unique position (Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992) and that it takes more than a mere balancing of the medical evidence to over come the presumptive weight accorded a designated doctor (Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993), where there is sufficient other medical evidence that the hearing officer determines to be the great weight, and the matter is not appealed by either party, we find no basis to disturb the hearing officer's determination.

Once a hearing officer makes a finding that the great weight of the other medical evidence is contrary to the designated doctor's report and therefore does not accord it presumptive weight and does not base the impairment rating on the report, then Article 8308-4.26(g) provides that the impairment rating of one of the other doctors shall be adopted. Weighing the various reports, he found that Dr. C, "in certifying an impairment rating of 11% for claimant, performed a range of motion test and considered the EMG (Dr. R also did not consider the EMG) indicating a denervation potential in claimant's right leg." Dr. C's report also is clear in showing that he used the correct AMA Guides. We have previously stated that when a hearing officer rejects a designated doctor's report because the great weight of the other medical evidence is to the contrary, he must set out the evidence he considers relevant to his conclusion. *See* Texas Workers' Compensation Commission Appeal No. 93123, decided April 5, 1993. Under the circumstances presented here, we find that he has done so and that there is a sufficient basis for his findings and conclusions. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge