APPEAL NO. 93250

On March 1, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue considered was the correct impairment rating assigned to the claimant, (who is the appellant in this case). Mr. S had injured his back while employed as a pressman at (employer), on January 29, 1991. The hearing officer determined that the report of the designated doctor was entitled to presumptive weight and was not contrary to the great weight of the other medical evidence, and adopted the designated doctor's impairment rating of 5%, in which he stated that maximum medical improvement (MMI) had been reached October 31, 1991.

The claimant appeals this decision, arguing that the great weight of other medical evidence is to the contrary. The claimant also asks the Commission to take notice that the doctors who have assigned impairment ratings to claimant are typically used by insurance companies to render opinions that coincide with insurance companies views. The carrier responds that the decision of the hearing officer is supported by the record, and that there is no proof in the record for the assertions made by claimant about the doctors in question.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

The claimant stated he was injured when he fell backward on a catwalk on January 29, 1991. The claimant indicated that he was initially treated by Dr. S, referred by the employer, who told him he had a muscle strain and released him to light duty. Claimant had also been treated by a course of doctors of his choice, ranging from Dr. E, to (Dr. S), to (Dr. B). He was treated for pain management and received work hardening therapy, for a course of months supervised by (Dr. SC), who was referred by Dr. S. Claimant has also received objective tests and psychological evaluation. Claimant was also evaluated for a second opinion on spinal surgery by Dr. F. On this report only mild bulging was observed and a diagnosis of herniated disc was not confirmed. Claimant has not had surgery. Claimant continues to have pain; objective tests, however, have been negative, except for noting a mild lumbar disc bulge.

Claimant has received a number of impairment ratings. Dr. SC assessed MMI on October 31, 1991, with a 5% impairment rating, after claimant had successfully completed work hardening. Dr. S, whose report indicates that he did not agree that claimant had reached MMI, nevertheless assesses a "disability" rating, referencing the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides) as the basis, of 27%, primarily for range of motion impairment, although part of this is for the objective disc condition. A subsequent assessment was done by Dr. A (Dr. A), who, although characterized as a carrier doctor by claimant's attorney, was one of three doctors whose names were submitted by the claimant to the carrier when the carrier sought either an independent medical examination or a designated doctor. Claimant testified that Dr. A gave him a 2% impairment rating; the MMI date noted by the hearing officer was February 10, 1992.

As a result of dispute over Dr. A's status, the Texas Workers' Compensation Commission appointed (Dr. O) as designated doctor. In a TWCC-69 dated December 17, 1992, Dr. O determined that the claimant had a 5% impairment, and had reached MMI on October 31, 1991. According to the report, 5% was assessed for the bulging disc, using a table from the AMA Guides. No impairment was assessed for range of motion because, as documented in Dr. O's report, limitations in motion did not cross validate, or movements were undertaken with no problem.

The hearing officer did not err when she gave presumptive weight to the opinion of the designated doctor in this case, or when she found that the great weight of other medical evidence was not against that report.

The claimant testified as to his pain and inability to hold employment. To decide whether the designated doctor's report still had value as an assessment of MMI and impairment, however, the hearing officer had to follow the 1989 Act, which states that the "presumptive" weight of a designated doctor's report may only be overcome by the great weight of medical evidence. Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. Article 8308-4.25(b); 4.26(f) (Vernon Supp. 1993) (1989 Act). The source of such medical evidence can only be a health care provider, not a layperson. Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992.

In this case, the designated doctor's assessments are corroborated, not outweighed, by much of the other medical evidence. Although Dr. B indicates in his reports that he is aware that claimant was examined by Dr. O, and states an opinion that claimant has not reached MMI as of February 26, 1993, Dr. B's response to Dr. O's opinion are not set forth. Dr. SC, however, was apparently asked to comment on Dr. B's recommendations for further testing. Dr. SC stated that he felt that diskography (sic) would not render valid results, because, in his opinion, the claimant had shown symptom magnification. While he did not quarrel with further EMG testing, he opined that it would continue to be negative. Dr. SC's letter states that he believes claimant's major problem is psychological. Although Dr. B opines an impression of ruptured disc, he himself noted in his October 2, 1992 report that claimant's myelogram looked normal except for the mild bulge that was the basis for Dr. O's impairment rating. All in all, we cannot agree that there is a "great weight" of medical evidence against the designated doctor's opinion. As carrier notes in its response, there is no evidence from which an impression could be formulated that the doctors who have disagreed with claimant's position are consistently insurance company oriented doctors, an assertion made notwithstanding the fact that three of the physicians were 1) referred by claimant's treating doctor (Dr. SC); 2) chosen and suggested by claimant who obtained the doctor's name from a referral service (Dr. A); or 3) appointed by the Commission (Dr. O).

MMI will not mean, in all cases, that the injured employee is pain-free or completely

restored to the condition he or she was before the injury. This is because the definition of MMI is the earlier of 104 weeks after the date income benefits began to accrue, or "the point after which further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated, based on reasonable medical probability." Article 8308-1.03(32)(A). The impairment rating is the percentage of "permanent impairment" resulting from the compensable injury, Article 8308-1.03(24) & (25), and must be based on objective clinical or laboratory findings. Article 8308-4.25(a)

The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. Article 8308-6.34(e). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

Therefore, we affirm the hearing officer's adoption of the designated doctor's opinion that MMI had been reached and claimant has an impairment rating of 5%, and that the great weight of other medical evidence was not to the contrary.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge