APPEAL NO. 93261

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1993). On January 22, and March 10, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant (claimant) reached maximum medical improvement (MMI) on November 12, 1992, with a 3% impairment rating. Claimant appealed stating that claimant's treating physician and even the carrier's examining doctor spent more time with her than did the designated doctor; claimant says the presumption should not be accorded the designated doctor. Respondent (carrier) replies that the decision of the hearing officer should be affirmed.

DECISION

Finding that the decision and order are sufficiently supported by the evidence, we affirm.

Claimant distributed food in a van. On (date of injury), she stated that she hurt her left shoulder lifting milk cartons. She kept working for a while and first visited a doctor on her own in March. She saw that doctor until June when she began seeing an orthopedist. (Note claimant's exhibit 1, labeled as records of (Dr. G and D), also has records of Dr. B (Dr. B); it appears that all were associated under the same name, with some offices in different locations.) The first entry in June indicates Dr. B wanted an evaluation by MRI. Claimant was seen again in July, August, September, October, November, January, February and March without having gotten an MRI. Repeated notes state that claimant will get the MRI, that it has been delayed, or that there is some confusion about it. Finally in April 1992, in a letter by Dr D, reference is first made that claimant has claustrophobia. During the time claimant was followed, therapy was attempted, but the more consistent treatment by these doctors involved medication. On December 23, 1992, Dr. G notes that he advised claimant of a new type of MRI, available in Houston, that is not enclosed. He states, "she does not want to go there to get it done."

While Dr. D (as shown in carrier's exhibit 2) said that claimant reached MMI on October 13, 1992, with a 45% impairment, claimant's position was that she had not reached MMI. (This rating was later shown not to be of the whole body.) A designated doctor, (Dr. T), found MMI on November 12, 1992, with a 3% impairment. (The hearing officer's decision states that the Texas Workers' Compensation Commission "appointed" this physician; while the decision does not say who selected him, the hearing officer's findings indicate that she treated the designated doctor as having been selected by the Commission.)

Claimant has also been examined by (Dr. Gr), a psychiatrist chosen by the carrier to examine claimant. He stated that claimant initially had a strain but "has developed a reflex sympathetic syndrome." He advised nerve blocks, aggressive contrast modalities, and steroids. He did not say that claimant has reached MMI.

Claimant attacks the designated doctor's report because he saw her only once. She adds that even Dr. Gr spent more time with her than did Dr. T and implies that therefore the great weight of medical evidence is contrary to Dr. T. The weight to be given medical evidence is not based on quantity of the evidence or of the time spent with a particular doctor, absent evidence that the examining doctor did an inadequate evaluation. The legislature in choosing to give presumptive weight to a designated doctor did not impose any time standard on such doctor to warrant the presumption. *See* Texas Workers' Compensation Commission Appeal No. 93031, dated February 25, 1993. After reviewing the report of Dr. Gr and the notes of claimant's physician(s) in regard to treatment provided and the effort to get an MRI for 10 months, we conclude that the determination by the hearing officer, giving the designated doctor's report presumptive weight, was not against the great weight and preponderance of the evidence.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. In addition, in issues involving a designated doctor, the provisions of Article 4.25(b) and 4.26(g) of the 1989 Act call for the hearing officer to consider presumptive weight, unless otherwise indicated, regarding the designated doctor's report. The decision of the hearing officer indicates that she applied these standards in determining MMI and impairment rating. As stated, our review of the evidence does not indicate that her decision was against the great weight and preponderance of the evidence.

The decision and order is affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge