APPEAL NO. 93281

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 26, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue to be resolved was: "whether the great weight of medical evidence is against the designated doctor's assessment of maximum medical improvement and 0% impairment rating." The hearing officer determined that the great weight of medical evidence was not against the designated doctor's assessment of maximum medical improvement (MMI) and 0% impairment rating.

Appellant, claimant, contends that the hearing officer was in error and requests that we review the hearing officer's decision. Respondent, a self-insured political subdivision, herein carrier, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant testified he was employed by the (carrier) as a custodian. At about 3:45 p.m. on (date of injury), claimant stated he had his supply cart in front of the ladies restroom. As he was leaning down by his supply cart one of the teachers opened the door to the restroom, hitting the claimant in the forehead with the door handle. Immediately after the accident claimant went to the school nurse's office. Claimant states initially only his head hurt but by the next day he began to experience pain in his neck radiating down into his shoulder. What happened for the next two months is not precisely clear. Claimant states he worked "off and on." On March 11th, a school employee sent claimant to (Dr. C), an orthopedic specialist. Dr. C initially said he could return to work on 3-18-92, but later changed that to April 6th. By note dated April 7th, Dr. C stated claimant ". . . is still unable to work." Dr. C returned claimant to work effective 4-22-92. Dr. C completed a Report of Medical Evaluation (TWCC-69) certifying MMI on 4-23-92 with 0% impairment. Apparently because he had been released to go to work claimant contacted the Texas Workers' Compensation Commission (Commission). A Commission representative sent claimant to (Dr. S), an orthopedic surgeon, as a medical examination order (MEO) doctor by order dated 4-29-92. Claimant states he attempted to work in early May, before he saw Dr. S, but was unable to do so because of the pain. Dr. S ordered an MRI and treated claimant on several occasions. Dr. S took claimant off work effective May 5th. Claimant states Dr. S has still not released him for work and has recommended arthroscopic surgery on claimant's right shoulder. The hearing officer in his statement of evidence states "[i]n April he went to a [Dr. S] who returned him to work and said he had reached maximum medical improvement with a 0% impairment rating." The hearing officer apparently meant Dr. C, rather than Dr. S, who first saw claimant on May 5, 1992, and has continued to recommend further surgery. Although the record recites a Commission order dated July 2nd sending claimant to (Dr. E), that order does not appear in the record before us. However, it is undisputed that Dr. E,

the chief of orthopaedic surgery at (clinic), (city), was appointed as the designated doctor to examine claimant. Dr. E saw claimant at least three times and rendered several reports. After Dr. E released claimant for light duty claimant states he attempted to work two days or so in September. Claimant states he was unable to work and was discharged shortly thereafter. The carrier points out, and it is not denied by claimant, that two weeks after being discharged claimant applied for and is receiving unemployment compensation benefits.

Dr. C, the first orthopedic specialist to see claimant finds, on an Initial Medical Report (TWCC-61) dated 3-20-92, that claimant had some tenderness, with normal range of motion, no spasms, and x-rays showed no significant abnormality. Claimant was given Motrin and Darvocet for pain. In a Specific and Subsequent Medical Report (TWCC-64) dated 4-21-92, Dr. C finds continued complaints of pain "[a]bout the right trapezium" but with "full range of motion, normal neurological examination and normal strength." In an undated Report of Medical Evaluation (TWCC-69) Dr. C certified MMI on 4-23-92 with 0% impairment.

Dr. S, the orthopedic MEO doctor, in a report dated 5/5/92, states claimant requires a neurological consultation and an MRI "to rule out disc hernia." Dr. S states claimant "is temporarily disabled." In a TWCC-61 dated 05-05-92, Dr. S finds: "Restricted flexion of cervical spine. Trapezial tenderness. Restricted flexion of shoulder. Tenderness over anterior aspect of rotator cuff. Normal neurological." An MRI of the right shoulder apparently done around May 13th concludes "[m]oderate, Grade II, (Neer Calcification) impingement syndrome involving both the hypertrophy at the AC joint and the hooked acromion, manifested chronic tendinitis, without signs of a full thickness tear." An MRI of the cervical spine was normal. By note dated 6/25/92, Dr. S remarks the "MRI scan [of the shoulder] shows impingement syndrome" which has not responded to conservative treatment and recommends arthroscopy and subacromial decompression." Those comments are also on a TWCC-64 dated 7-29-92. By TWCC-64 dated 8/4/92, Dr. S notes claimant's care is being transferred to Dr. E.

Dr. S referred claimant to (Dr. A), a neurologist, who by report dated May 26th diagnosed Post Traumatic Cephalgia, Cervical and right shoulder strain."

Dr. E is the Commission designated doctor. By report dated July 28, 1992, Dr. E stated he found claimant "had full painless range of motion of the right shoulder" and states:

> I shall withhold final judgement on [claimant's] physical state until I have had the opportunity to see his previous imaging studies. In the meantime, however, it seems clear that the myofasciitis (sic) involving the right trapezium muscle and those muscles at the base of the neck is sufficiently painful and of sufficient severity to preclude his engaging comfortably in any manual labor

> at this time so I would have to say that he has not reached [MMI] and that he will require a very specific therapy program aimed at achieving relaxation and normal function of the right trapezius and adjacent muscles.

Dr. E in a progress note of 10/06/92 noted:

> [claimant] has full range of right shoulder . . . there is nothing intrinsically wrong with the right shoulder, that it's an extrinsic problem in the trapezius myofascilities. Through correspondence I indicated that it would be all right for [claimant] to go back to work on a limited schedule proposed. Apparently he went back to work but was subsequently fired. . . . obtained [MRI] films of his shoulders today . . . don't (sic) show any evidence of acromion deformity which . . . needs to have . . . shaving procedure which . . . [Dr. S] proposed.

In a letter dated October 15, 1992, to carrier, Dr. E states: "If [claimant] has reached [MMI] now he had reached it on July 23, 1992 as there has been no change in physical findings . . . ." Dr. E completed a TWCC-69 certifying MMI on 7-23-92 with 0% impairment.

The hearing officer adopted the designated doctor's report certifying MMI and assigning a 0% impairment rating specifically concluding the great weight of medical evidence is not against the designated doctor's assessment of MMI and 0% impairment rating. Claimant requests a review and emphasizes Dr. S's reports which indicate that Dr. S believes he needs surgery on his right shoulder.

In Texas Workers' Compensation Commission Appeal No. 93105, decided March 26, 1993, Chief Appeals Judge Sanders rendered a broad review of the designated doctor procedure, noting the report of the designated doctor shall have presumptive weight and the Commission shall base it's determinations on that report unless the great weight of the other medical evidence is to the contrary. Article 8308-4.25(b) and 4.26(g). We have further emphasized that MMI does not, in every case, amount to pain-free recovery. *See* Texas Worker's Compensation Commission Appeal No. 93007, decided February 18, 1992, and Texas Worker's Compensation Commission Appeal No. 92670, decided February 1, 1993. While MMI may appear to mean complete recovery to the lay person, that is not necessarily what it means for purposes of workers' compensation benefits. Appeal No. 93007, *supra*. When the doctor finds MMI and assesses an impairment, the doctor has determined, based upon medical judgement, that there will likely be no further material recovery from the injury.

We have repeatedly emphasized the unique position occupied by the designated doctor under the 1989 Act. *See* 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 No. 92412, we pointed out that to outweigh the report of a designated doctor requires more than a mere balancing of the

medical 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 this case three doctors gave opinions as to MMI and impairment. Dr. C certified MMI on 4-23-92, with 0% impairment. Dr. S recommended arthroscopic surgery. This recommendation, along with the MRI film, was reviewed by the designated doctor who specifically stated he did not feel surgery was warranted and certified MMI on July 23, 1992 with 0% impairment. In conclusion Dr. C in essence agrees with the designated doctor and only Dr. S believes that claimant should have surgery. As noted above, the "presumptive weight" of the designated doctor's report can be overcome only by the "great weight of other medical evidence" to the contrary. The mere difference of opinions by one other doctor does not, in this case, constitute the great weight of other medical evidence to the contrary. We have observed that no other doctor's report, including a report of a treating doctor, is accorded the special presumptive weight given to the designated doctor's report. *See* Texas Workers' Compensation Commission Appeal No. 92336, decided September 10, 1992 and Appeal No. 92412, *supra*.

We find there is sufficient evidence to support the hearing officer's determination that the great weight of other medical evidence is not contrary to the designated doctor's assessment of MMI and impairment. The decision of the hearing officer is affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Philip F. O'Neill
Appeals Judge