APPEAL NO. 93285

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01-11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held in (city), Texas, on March 16, 1993, to determine claimant's correct percentage of whole body impairment. Hearing officer held that the medical evidence in the record did not constitute the great weight of contrary medical evidence necessary to overcome the opinion of the designated doctor that the claimant's impairment rating was four percent. The appellant, hereinafter claimant, contends that the great weight of the medical evidence indicates claimant's correct impairment rating was 12 percent, and that the hearing officer should have rejected the impairment rating assigned by the designated doctor. The respondent, hereinafter carrier, asserts that the decision of the hearing officer was correct; it also contends that this panel should not consider additional evidence proffered on appeal by the claimant.

DECISION

We affirm the decision and order of the hearing officer.

It was not disputed that claimant suffered a compensable injury to his left knee on (date of injury). He was treated by an orthopedic surgeon, (Dr. B), who had in 1990 performed surgery on claimant's right knee and who performed surgery on claimant's left knee on March 17, 1992. His hospital admission report of that date shows claimant was admitted with a diagnosis of torn medial meniscus; the operative report described the procedure as "partial arthroscopic and medial meniscectomy." The same report said that the lateral meniscus "was slightly shaggy along it's (sic) inner edge and this was trimmed using the basket forceps and motorized meniscus cutters. No definite tear was noted in it's (sic) substance. . . ." On July 15, 1992, Dr. B determined that the claimant had reached maximum medical improvement (MMI) and assessed a whole body impairment rating of 10 percent. A July 20th letter accompanying the report of medical evaluation noted full knee extension and flexion, but indicated that claimant's impairment rating was based on a 25 percent impairment to the lower extremity for bilateral meniscectomies. At one point he parenthetically explained the term "bilateral" as "medial and lateral."

Sometime thereafter, apparently at the carrier's request, (Dr. S) found the claimant to have reached MMI with a four percent impairment. (The claimant's attorney contended at the hearing, and it was not disputed, that Dr. S did not examine claimant but only reviewed his medical records.) An August 12, 1992, letter from Dr. S states her belief that Dr. B's impairment rating was "slightly high." As she wrote, "[Dr. B] states that [claimant] has had bilateral meniscectomies, but his first meniscectomy took place in November of 1989."

(Dr. H) was appointed by the Texas Workers' Compensation Commission (Commission) as the designated doctor. He found the claimant to have reached MMI on July 15, 1992, with a four percent whole body impairment rating, derived from a 10 percent

impairment for a single meniscus. He also wrote, with regard to any loss of motion, "[claimant's] flexion and extension is intact. He does experience some discomfort with deep weight bearing flexion. This is subjective and not a structural limitation."

On September 21, 1992, Dr. B wrote the carrier as follows with regard to a "misunderstanding" over "bilateral meniscectomies:"

> After reviewing my record of July 20, 1992, and my operative record, it would appear that I did make a mistake in this patient's evaluation. I will try and clarify.
>
> After reviewing Polaroid films and my operative report, you will note that, along with a partial medial meniscectomy, I proceeded with a trimming of the lateral meniscus as well. For this reason, in making my assessment, I considered that partial meniscectomies had been carried out on both menisci which I incorrectly termed bilateral when I should have said that the patient had undergone partial arthroscopic medial meniscectomies to both the lateral and medial menisci.

Dr. B went on to state that because only a "mild trimming" of the lateral meniscus was performed, claimant's impairment to the lower extremity should read 15 percent rather than the maximum 25 percent allowed by the American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment. Dr. B completed a second report of medical evaluation in which he found MMI as of September 15, 1992, with a 12 percent whole body impairment.

On November 6, 1992, Dr. B wrote that he had reviewed Dr. H's evaluation and it was "very obvious that [Dr. H] did not review my operative report in which I indicated that there had been surgery at the level of both menisci, even though only a simple trimming was carried out on the lateral side." He also stated that Dr. H only assessed an impairment rating based on a partial medial meniscectomy alone and without combining it with a range of motion impairment. At the hearing carrier's adjuster, Ms E, testified that Dr. B's records, including the operative report, had been sent to both Dr. H and Dr. S, but she had no personal knowledge as to whether those doctors actually reviewed the records.

The hearing officer determined that her review of the medical evidence in the case indicated it did not constitute the great weight of the contrary medical evidence necessary to overcome the opinion of the designated doctor, Dr. H. She accordingly determined that claimant's impairment rating was four percent.

In his appeal, the claimant contends that the great weight of the medical evidence in the case lies with Dr. B's opinion. In support of this contention, he cites the facts that Dr. B is an orthopedic specialist; that there is no evidence that Dr. H was qualified to evaluate,

assess, or second-guess a board-certified orthopedic surgeon; that Dr. H was not present during the surgical procedure, and there is no evidence he reviewed the Polaroid films of the procedure; and that because Dr. H did not have the opportunity to review Dr. B's September 21 and November 6, 1991, letters he did not "review all the medical records that were critical in evaluating [claimant's] whole body impairment." The claimant also contends the hearing officer erred in taking official notice of the AMA Guides and Dorland's Illustrated Medical Dictionary, as there is no evidence she has a medical background or is qualified to base her decision on her evaluation and review of these materials. Claimant attached to his request for review a copy of Dr. B's curriculum vitae, which was not part of the record below. Not only is this panel limited in its consideration to the record developed at the hearing, there is no indication that this information was unknown or unavailable at the time of the hearing or that due diligence would not have brought them to light. *See* Texas Workers' Compensation Commission Appeal No. 91132, decided February 14, 1992.

This panel on many occasions has written regarding the 1989 Act's mechanism for resolving disputes over MMI and impairment, whereby an independent doctor is designated to finally resolve such disputes. For this reason, the act accords presumptive weight to the designated doctor's report, which cannot be overturned by a mere balancing of the evidence but only by the great weight of other medical evidence. *See* Articles 8308-4.25 and 4.26; Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. So long as the designated doctor complies with the basic requirements contained in the appropriate Commission rule, *see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1 (Rule 130.1), he or she will have adequately assessed MMI and impairment. Beyond those requirements, there is nothing in statute or rule which provides that a designated doctor must be of a particular medical specialization; *see* Texas Workers' Compensation Commission Appeal No. 93062, decided March 1, 1993; nor is the designated doctor's report in and of itself faulty because the doctor did not consider reports generated after the designated doctor examined the claimant. (Although there may be occasions in which a hearing officer may justifiably request that a designated doctor review and comment on subsequent reports, we note that that was not the case here).

The record in this case indicates that the designated doctor had before him all claimant's medical records, including the operative report describing the lateral meniscus as "slightly shaggy with no definite tear," and that he based his impairment rating upon his assessment of a torn single meniscus and full flexion of the knee. We find supportable the hearing officer's determination that the opinion of Dr. B--who would have assessed a greater impairment rating based upon his trimming of the lateral meniscus--does not constitute the great weight of the medical evidence to the contrary.

With regard to the claimant's point of error regarding the hearing officer's taking of official notice, we note that the hearing officer is authorized to take official notice of certain items, including facts that are judicially cognizable and generally recognized facts within the

Commission's specialized knowledge. Rule 142.2. To the extent the hearing officer may have taken notice of any facts which were not within the general public's, or the Commission's specialized knowledge, any such error would be harmless given the strong statutory presumption in favor of the designated doctor's opinion.

We accordingly affirm the decision and order of the hearing officer.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge