APPEAL NO. 93526

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). On June 1, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine the issues of whether claimant, RG, who is the appellant, reached maximum medical improvement (MMI) and his correct impairment rating resulting from a lumbar spine injury sustained on (date of injury), while in the course and scope of employment as a boilermaker with EOY, Inc. (employer). The hearing officer determined that the report of the designated doctor on impairment should be accepted and found that claimant's impairment rating was 10%, but that claimant reached maximum medical improvement (MMI) on March 29, 1993, by operation of law.

The claimant has appealed this decision as the designated doctor's impairment rating, arguing that the designated doctor's report was based upon an incorrect examination and that the range of motion evaluation was not done correctly and in conformity with the AMA Guides to the Evaluation of Permanent Impairment (Guides). The carrier argues why the decision should be upheld.

DECISION

We affirm the hearing officer's decision.

The claimant testified that he injured his back on (date of injury), and had a diskectomy on August 29, 1991, for (according to medical records) a herniated disc. The claimant's treating doctor, (Dr. I) determined that he reached MMI on May 19, 1992, with an 18% whole body impairment rating. Claimant was thereafter examined by a doctor for the carrier, (Dr. K). Dr. K determined he reached MMI on December 2, 1992 with a 10% impairment rating. A designated doctor, (Dr. S), determined claimant reached MMI by the date of his examination, April 6, 1993, with a 10% impairment rating.

The claimant recalled that he had been asked to bend and move by Dr. S only once. He stated that Dr. S did not use any instrument. He believed that Dr. S had received his medical records from Dr. K.

Claimant indicated that he disagreed with Dr. I's MMI assessment. The claimant testified very briefly that he had seen another doctor, (Dr. F), who is apparently of the opinion that claimant will need further treatment. Claimant said that he felt he had gotten worse since his surgery.

According to medical records, claimant's herniated lumbar disc was partially removed. An MRI of the lumbar spine conducted on February 21, 1992, indicated no other herniated discs. There were some post-surgical changes noted between L4-5 and L5-S1. Dr. I's TWCC-69 indicated that his 18% rating was for eight percent range of motion loss and 10% surgically operated disc as indicated by "Table 53" of the Guides.

Dr. K's records indicate that he referred claimant for an EMG test, which revealed some mild abnormality related to the L5-S1 level, and mild stenosis at L2-3 and L4-5. A myelogram was also performed on August 11, 1992, which found some diffuse bulging at L4-5 with some nerve root edema. A CT scan performed that date confirmed stenosis located at two lumbar levels as well as "superimposed moderate diffuse bulging of the annulus fibrosis and mild lateral recess compromise at the L4-5 level." Dr. K's report of his June 22, 1992 examination states that claimant ambulated without significant appearance of pain, raised his legs without pain, and got in and out of a chair without difficulty. Dr. K's TWCC-69 indicated that he felt claimant needed a second surgery to improve, but that claimant never advised him of his decision.

Dr. S's report indicated that he reviewed Dr. K's records and agreed that claimant had a valid pathology. Dr. S notes the results of the myelogram, EMG, and MRI studies done by Dr. K. The report indicated that the amount of mobility present in claimant "varied on several attempts," and appeared to be limited by pain. Dr. S opined the reasons why he felt that there was no true muscle weakness in the lower extremities.

The use of a designated doctor is intended under the Act to assign an impartial doctor to finally resolve disputes over MMI and impairment rating. To achieve this end, the report of a Commission-appointed designated doctor is given presumptive weight. Article 8308-4.26(g). Only the great weight of medical evidence can reverse this presumptive status. A finding of impairment by a doctor chosen by the claimant must be confirmable by a designated doctor. Article 8308-4.25(a). As the Appeals Panel has stated before, this requires more than a mere balancing of the evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. A claimant's non-medical testimony or evidence about his condition does not alone provide a sufficient basis to overcome this presumption.

The determination that claimant reached MMI according to the definition set out in Article 8308-1.03(32)(A) has not been directly appealed, although claimant argues that he believes that something more can be done for him. It is important to emphasize that the determination of MMI and impairment affects only income benefits, and the claimant remains entitled to reasonable and necessary medical care for his compensable injury. Article 8308-4.61.

Although the claimant notes that the impairment rating does not consider the impact on the injured person or the failure to meet social, personal or occupational needs or demands, we would respectfully point out the definition of "impairment" set out in the 1989 Act, Article 8038-1.03(24), stresses that anatomical or functional abnormality or loss, rather than subjective personal or social losses, is what is compensable. Article 8308-4.24 directs that the existence and degree of "impairment" be done using the Guides. However, the Guides were not devised only for workers' compensation use and are adaptable for

purposes not having to do with workers' compensation. Because of this, matters contained in the Guides which may involve considerations not having to do with the 1989 Act's definition of impairment should not be calculated into the rating.

Claimant did not prove, through medical evidence, that Dr. S's method of evaluating range of motion was not sound in his case. The Appeals Panel has determined that when range of motion does not "validate" or varies, it is not required that a valid test be concluded before an impairment rating is rendered. Texas Workers' Compensation Commission Appeal No. 92494, decided October 29, 1992.

In this case, there is some medical evidence against Dr. S's report in the form of Dr. I's report. Carrier asserts that Dr. I's report is faulty because he relied upon the range of motion findings of a physical therapist. This alone does not undermine the report, as we have stated that a doctor may rely upon the results of impairment tests performed by others in rendering his or her opinion. *See* Texas Workers' Compensation Commission Appeal No. 92627, decided January 7, 1993. However, the hearing officer's conclusion that this did not amount to a "great weight" against Dr. S's report is supported by sufficient evidence. The carrier pointed out in cross-examination that the range of motion tests may have been influenced by muscle spasms claimant felt at that time. The completeness and reliability of Dr. S's examination were for the hearing officer to evaluate.

The determination of the hearing officer that the great weight of medical evidence is not against the report of the designated doctor is sufficiently supported by the record, and is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge