APPEAL NO. 93528

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 May 27, 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 February 24, 1993, with a three percent impairment rating; in addition claimant's compensable injury did not cause him to be unable to obtain and retain employment from September 9, 1992 to the present. Claimant asserts error in Findings of Fact 6, 7, 8, and 10 and related conclusions of law. The respondent (carrier) asks that the hearing officer be affirmed.

DECISION

We affirm.

At the hearing the parties agreed that an issue was whether the great weight of other medical evidence was contrary to the opinion of the designated doctor who believed MMI was reached on February 24, 1993, with a three percent impairment. There was a question as to whether disability was in issue since disability for a period of time was now before a district court; the claimant argued that disability was an issue and the hearing officer addressed it in the decision.

Article 8308-6.43(c) of the 1989 Act states that the Appeals Panel "shall determine each issue on which review was requested."

The Appeals Panel determines:

That there is sufficient evidence to support the findings of fact in issue, the conclusions of law, and the decision and order.

Claimant was injured on (date of injury). The hearing officer took notice of prior decisions in regard to this injury. Texas Workers' Compensation Commission Appeals No. No. 92103, decided May 1, 1992, and No. 92582, decided December 7, 1992, dealt with whether the injury was compensable and with disability, respectively. Claimant's (date of injury), injury resulted from another employee striking claimant with a hammer.

Texas Workers' Compensation Commission Appeal No. 92582, *supra*, upheld the hearing officer's decision that claimant had disability from the (date of injury), incident only until June 5, 1992.

(Dr. A) has been claimant's treating doctor; his opinions were considered at the hearing that led to Appeal No. 92582, *supra*. Dr. A, referred claimant to (Dr. B), a board certified Chiropractic Orthopedist. Both Dr. A and Dr. B were of the opinion that claimant

would benefit from manipulation while under anesthesia. Dr. A referred to testing done, since the hearing that led to Appeal No. 92582, that consisted of a surface EMG and video fluoroscopy, the latter done by Dr. B. These tests indicate, according to Dr. A, that claimant's neck should be manipulated under anesthesia.

Dr. B examined claimant and found muscle and ligament damage to his neck. The videofluoroscopy indicated that claimant had some "abnormalities in his spinal joint motion". He also said that claimant's cervical lordosis is reversed. He found that claimant reached MMI on May 4, 1993, with a 19% impairment rating. Dr. B thinks that claimant still needs approximately six weeks of physical therapy and if that does not help, he should be considered for neck manipulation while anesthetized.

Claimant testified that he could not perform his normal job because "the more I do, the more it hurts". He added that the designated doctor, (Dr. S), was abrupt with him. Dr. S was described as throwing Dr. A's report aside; claimant added that he never saw Dr. S review the treatment information that he brought with him and that claimant then took it with him when he left. Claimant also related that Dr. S left the room and could be heard talking of medical problems which were similar to his. At one point in the testimony the following occurred:

Q.Did he advise you when you tried to tender the x-ray and other testing documentation to him that his report was already done and was it going to be out tomorrow?

A.Yes, he said it wouldn't be no time at all before his report was done. It was like it--the way it sounded to me, he already had it typed up and signed.

Dr. S's report was dated February 24, 1993, and it stated that claimant reached MMI on February 24, 1993, with a three percent impairment. Dr. S relates claimant's history. He referred to MRI's as either normal or unremarkable. He noted "extensive chiropractic manipulations over the past twenty months". He also noted the opinions of (Dr. G), who did not think claimant's disability lasted longer than two months, (Dr. L), a neurosurgeon, who found no need for surgery in June 1992, and Dr. V), who in June 1992, found claimant to have "post traumatic cervical pain with associated occipital headaches" and treated him with Elavil, a TENS unit and exercises. Dr. S's evaluation included range of motion with an inclinometer about which there is no specific complaint. Dr. S considered manipulation for claimant while under anesthesia and opined that he saw no indication for it. He concluded that claimant was fit to return to work at "full duty". (Assertions were made about Dr. S's manner of evaluation of the claimant, and Dr. S replied by letter dated March 1, 1993, which was also in 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, Articles 8308-4.25 and 4.26 of the

1989 Act contain language giving the designated doctor's opinion as to MMI and impairment rating presumptive weight unless the great weight of other medical evidence is contrary to that opinion. The hearing officer applied this standard in considering whether to give presumptive weight to Dr. S's opinion. As the finder of fact, the hearing officer was responsible for determining what weight to give any particular medical evidence from medical doctors or doctors of chiropractic in deciding whether the great weight of other medical evidence was contrary to the designated doctor. *See* Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.) and Jackson v. Killough, 615 S.W.2d 274 (Tex. Civ. App.-Dallas 1981, no writ).

In determining that the great weight of other medical evidence was not contrary to the designated doctor, the hearing officer could consider the thoroughness, accuracy, and credibility (also considering the basis provided for opinions asserted) of the designated doctor's opinion. *See* Texas Workers' Compensation Commission Appeal No. 93493, decided July 30, 1993. The hearing officer could also consider the allegation of unfairness asserted against the designated doctor by considering the thoroughness of that doctor's opinion, its reference to studies that showed no abnormality, to other doctor's who had evaluated the claimant, and to the reply made by the designated doctor regarding the allegation. The hearing officer could consider that the amount of time the designated doctor spent with the claimant was not determinative in weighing the evidence. *See* Texas Workers' Compensation Commission Appeal No. 93482, decided July 29, 1993. While Dr. V assessed the claimant in June 1992, as having pain and provided treatment therefor, Texas Workers' Compensation Commission Appeal No. 92394, decided September 17, 1992, has stated that attainment of MMI does not mean in all cases that the claimant will be pain free. Finally, the hearing officer could consider that Dr. L did not believe that surgery would be beneficial.

Findings of Fact 6 and 7 are sufficiently supported by the report of Dr. S dated February 24, 1993. Dr. S saw the claimant in the capacity of the designated doctor; he certified MMI on February 24, 1993 with three percent impairment. In addition Dr. S referred to MRI tests in his report and the evaluations of other doctors, including Dr.'s G, L, and V; Dr. S referred to an objective abnormality as the claimant's tremor (primarily of the right hand), but said it was not related to the injury.

Finding of fact 8 is sufficiently supported by the report of Dr S and his later letter of reply to accusations made against him. The hearing officer notes the doctor reviewed the reports of other practitioners and studies rendered concerning the claimant. As finder of fact the hearing officer could choose to believe Dr. S in his reply letter concerning the claimant's evaluation and not believe all that claimant testified to about the way that examination was conducted. *See* Garza v. Comm. Ins. Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ), and Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied).

Finding of fact 10 is sufficiently supported by the medical record of Dr. G who found that disability probably ended within two months of the injury and Dr. S, who in February 1993, stated that claimant was "fit to return to work at full duty". In addition Texas Workers' Compensation Commission Appeal No. 92582, decided December 7, 1992, upheld the hearing officers' determination, which was based to some extent on Dr.
G and Dr. L's reports, also available in this hearing, that disability only extended to June 5, 1992.

The Conclusions of Law follow the findings of fact and are sufficiently supported by the evidence. In particular, there is sufficient evidence to support the determination that the great weight of other medical evidence, is not contrary to the opinions of the designated doctor as to MMI and impairment rating.

The decision and order are not against the great weight and preponderance of the evidence and are affirmed.

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge