APPEAL NO. 93535

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 4, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) reached maximum medical improvement (MMI) on December 1, 1992, with a 12% impairment rating. Claimant asks generally that the decision be reviewed, pointing out that her treating doctor found impairment to be 19% and that her ability to work is restricted. Respondent (carrier) did not reply.

DECISION

We affirm.

At the hearing the parties agreed that the issues were: (1) what is the date of MMI, and (2) what is the impairment rating.

Article 8308-6.42(c) of the 1989 Act states that the Appeals Panel "shall determine each issue on which review was requested."

Claimant's appeal addresses only the impairment rating, not the date of MMI, and will be considered on the basis of whether there is sufficient evidence to support the decision of the hearing officer.

The Appeals Panel determines:

That there is sufficient evidence to support the determination of the hearing officer that the claimant's impairment rating is 12%, with an MMI date of December 1, 1992.

Claimant worked for the employing school for approximately 10 years when she hurt her back lifting a heavy tray of hamburger on (date of injury). At first, in December 1991, her treating doctor, (Dr. M) thought the injury would allow her to keep working, which she did for a period. An MRI in August 1992, showed some bulging at L5-S1 and "small disc herniation" at L3-4 which impinged on the thecal sac, but not the nerve root. Dr. M advised claimant to have an epidural steroid injection, but she chose not to have it.

(Dr. H) was appointed as a designated doctor on September 18, 1992. He saw claimant twice in October and deferred a finding that MMI had been reached while he awaited the results of the advised epidural injection. He then opined that MMI was reached on December 1, 1992, with a 12% impairment rating when claimant did not get the shot. Dr. H's reports, consisting of a five page narrative dated October 14, 1992, and a TWCC Form 69 dated November 30, 1992, together constitute a thorough evaluation of the claimant. His narrative did not quarrel with the plan for an epidural injection and opined that MMI should occur about one month after the injection if it were successful; he did not rule

out the possibility of spinal decompressive surgery in the future. As stated, when claimant did not receive the injection, Dr. H found MMI as of December 1, 1992.

After Dr. H found MMI with 12% impairment, Dr. M replied that he believed his impairment rating of 19%, given on October 14, 1992, when he found MMI after claimant refused the epidural injection, was correct. Dr. M did not comment about the surgery mentioned by the designated doctor, Dr. H, and Dr. M's records do not show that he has advised that any surgery should be performed.

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 the 1989 Act at Article 8308-4.25 and 4.26 provides that the opinion of the designated doctor in regard to MMI and impairment rating shall be given presumptive weight unless the great weight of other medical evidence is to the contrary.

The reports of the designated doctor were thorough and credible. His evaluation was not attacked as inadequate. The opinions of the treating doctor, Dr. M, were not without merit, but the legislature has chosen to provide presumptive weight to the designated doctor's opinion unless the great weight of other medical evidence is to the contrary. Claimant's treating doctor found MMI to have been reached before the designated doctor did. In addition the statute (1989 Act) does not provide that the designated doctor's opinion can be overcome by the fact that claimant cannot return to work, but only by the great weight of other medical evidence. The hearing officer's decision that the great weight of other medical evidence is not contrary to the designated doctor's opinion is sufficiently supported by the evidence.

The decision and order of the hearing officer are sufficiently supported by the evidence and are affirmed.

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge