APPEAL NO. 93661

On June 21, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). The issues at the hearing were whether the appellant (claimant) reached maximum medical improvement (MMI) and if so, what is his correct impairment rating. The hearing officer determined that the claimant reached MMI on November 18, 1992, with a nine percent impairment rating as reported by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant states that he is dissatisfied with the hearing officer's decision and requests additional time to furnish medical records. The respondent (carrier) responds that the claimant's appeal may not have been timely filed, that the hearing officer kept the hearing record open for two weeks to allow the claimant to submit additional medical documents after the date of the hearing, and that the hearing officer's decision is supported by the evidence. The claimant's appeal was timely filed.

DECISION

The decision of the hearing officer is affirmed.

The claimant was injured at work on (date of injury), while working for his employer, (employer). The claimant's initial treating doctor was (Dr. G). At the request of the carrier, the claimant was examined by (Dr. L), who reported in a Report of Medical Evaluation (TWCC-69) that the claimant had reached MMI on March 4, 1992, with a zero percent impairment rating. Subsequently, Dr. G reported in a TWCC-69 that the claimant reached MMI on April 23, 1992, with a seven percent impairment rating. The Commission selected (Dr. W), as the designated doctor. In a TWCC-69 Dr. W reported that the claimant reached MMI on November 18, 1992, with a nine percent impairment rating. Dr. W's impression of the claimant's condition was 1) cervical strain, 2) lumbar radicular syndrome with right leg pain, and 3) apparent contusion of the right shoulder. Dr. W reported that MRI scans of the claimant's cervical spine, lumbosacral spine, and shoulder were normal as were CAT scans of the cervical spine and lumbosacral spine. A bone scan was also reported as normal. Dr. W's report indicates that he reviewed the claimant's medical records, reports, and diagnostic tests; gave the claimant a physical examination; and performed range of motion testing. At the claimant's request, the hearing officer kept the hearing record open for two weeks in order to allow the claimant to submit into evidence any other medical reports he desired to submit, including any reports from a Dr. S whom the claimant said was presently treating him. The claimant did not submit any additional evidence during the two week period and the record was closed.

It was the claimant's position at the hearing that he had not reached MMI. The carrier's position was that the claimant reached MMI on November 18, 1992, with a nine percent impairment rating as reported by Dr. W, the designated doctor. The hearing officer found that Dr. W's report was not contrary to the great weight of the other medical evidence and concluded that the claimant reached MMI on November 18, 1992, with a nine percent

impairment rating as reported by the designated doctor.

Pursuant to Sections 408.122(b) and 408.125(e) of the 1989 Act, the report of the designated doctor chosen by the Commission has presumptive weight and the Commission must base its determinations of MMI and impairment rating on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. In Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992, we pointed out that it is not just equally balancing evidence or a preponderance of the evidence that can overcome the presumptive weight given the designated doctor's report; rather, such other medical evidence must be determined to be the "great weight" of the medical evidence contrary to the report. We have also observed that no other doctor's report is accorded the special presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. Having reviewed the record in this case, we conclude that the hearing officer's determinations that the claimant reached MMI on November 18, 1992, with a nine percent impairment rating as reported by the designated doctor, are sufficiently supported by the evidence. The claimant's assertion on appeal that he is dissatisfied with the Commission's handling of his claim does not rebut the decision of the hearing officer and presents no basis for disturbing the hearing officer's decision.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge