APPEAL NO. 93674

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act) TEX LAB CODE ANN § 401.001 *et seq*. On July 16, 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 September 29, 1992, with a five percent impairment rating, as found by the designated doctor. Claimant asserts that the designated doctor's evaluation was brief and the great weight of other medical evidence was contrary to it; in addition, claimant states that the designated doctor should not have found a date of reaching MMI that was prior to the time of his examination. Respondent (carrier) was untimely in replying based on the date of a return receipt, provided by claimant, that showed the date carrier received the appeal.

DECISION

We affirm.

The issues at the hearing were the date that claimant reached MMI and the correct impairment rating.

Section 410.204(a) of the 1989 Act states that the appeals panel "shall issue a decision that determines each issue on which review was requested."

Claimant asserted on appeal that the limited nature of the designated doctor's evaluation resulted in the great weight of other medical evidence being contrary to it, and the designated doctor should not have certified that MMI was reached on a date earlier than the date on which he evaluated the claimant.

The Appeals Panel determines:

That the opinion of the designated doctor was entitled to presumptive weight, because the great weight of other medical evidence was not contrary to it, and was sufficient to support the hearing officer's decision that MMI was reached on September 29, 1992, with five percent impairment.

Claimant worked as a foreman (pipefitter) for (employer) when on (date of injury), he injured his back helping, in an emergency situation, to right a piece of machinery that had turned on its side. An MRI first showed that one disc was protruding and later, another showed degeneration at another level of the spine in addition to the bulge. Medical records show that claimant saw (Dr. B) and then (Dr. D). Reports of Dr. D were made on at least 13 occasions between July 30, 1991, and June 22, 1993, at regular intervals. They show continual communication between doctor and patient as to the efficacy of surgery. They also show significant efforts by Dr. D to reduce claimant's pain, or the effect of that pain, without undue reliance on pain medication. Dr. D did report that on September 29, 1992, claimant reached MMI with 20% impairment. In March 1993, without filling out a form

related to impairment rating, Dr. D did observe in a note that claimant now had an impairment of 15%.

Carrier's exhibit D shows that claimant was sent to (Dr. T), as the designated doctor, in March, 1993, for evaluation of percentage of impairment only. Dr. T, on March 22, 1993, found MMI on that date with five percent impairment. In his narrative that accompanied the TWCC form 69, Dr. T observed, "(a)t this time, the patient has been declared maximally medically improved." (sic) Dr. T does not specify in the narrative that MMI was not reached until the date he saw claimant, but did fill in the blank on the TWCC form 69 which calls for a date of MMI, as March 22, 1993, (the date of his evaluation). Thereafter, Dr. T in response to an adjuster for the carrier in May, 1993, amended his date of MMI to state September 29, 1992, but did not change his impairment rating. He noted in the narrative that accompanied his action in May, 1993, that he was appointed to provide an opinion as to impairment only, and he believed that the date of MMI found by the treating doctor in September, 1992, should be used.

Texas Workers' Compensation Commission Appeal No. 92469, decided October 15, 1992, states that the hearing officer can read an initial and amending report of the designated doctor together to determine MMI and the impairment rating. Also see Texas Workers' Compensation Commission Appeal Nos. 92441, decided October 8, 1992, and 92570, decided December 14, 1992. While communications by one party to the designated doctor after the initial opinion are discouraged and raise a question as to the efficacy of resultant amendments to that doctor's opinion (*See* Texas Workers' Compensation Commission Appeal No. 93045, decided March 3, 1993), the explanation given in this instance for revision is reasonable based on the circumstances of the case. In addition, a date of MMI may be certified as having been reached at a point prior to the time the designated doctor evaluated the claimant when medical records sufficiently support the date. *See* Texas Workers' Compensation Commission Appeal No. 92336, decided August 31, 1992.

While the time spent with the designated doctor will almost never be equal to that the patient spends with the treating doctor, Texas Workers' Compensation Commission Appeal No. 93031, decided February 25, 1993, observed that the 1989 Act provides a presumption to the designated doctor, not the treating doctor, even though the treating doctor would normally be more familiar with the claimant's injury. In the case on appeal, the designated doctor's report consists of the TWCC form 69 and a four page narrative; the narrative indicates that medical records were available, including the higher impairment rating of Dr. D; it also lists the testing of claimant that the designated doctor performed; the designated doctor's purpose is to evaluate, not carry out a plan of treatment, so some areas covered between treating doctor and patient are not within the purview of the designated doctor. While the American Medical Association Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February, 1989, (Guides)

provide that range of motion testing may be invalid, as reported by the designated doctor, the hearing officer is not precluded from inquiring into the feasibility of re-examination "at a later date" when range of motion values cannot be obtained on a prticular examination; see paragraph 3.3a A.4., page 72, of the Guides. In this instance the evidence was sufficient to support giving presumptive weight to Dr. T's opinion that said MMI was reached on September 29, 1992, with a five percent impairment.

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

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge