APPEAL NO. 93687

On July 14, 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) (formerly Article 8308-1.01 *et seq*.). The claimant sustained a work-related injury on (date of injury). The issues at the hearing were: 1) average weekly wage (AWW); 2) disability; 3) maximum medical improvement (MMI); and 4) impairment rating. The hearing officer determined that: 1) appellant's (claimant's) AWW is $102.31; 2) claimant had disability until she reached MMI; 3) claimant reached statutory MMI on February 26, 1993; and 4) claimant has a zero percent whole body impairment rating as reported by the designated doctor. Neither party appealed the determinations of MMI or disability, therefore, those determinations are not considered in this decision. The claimant contends on appeal that the hearing officer erred in basing impairment rating on the report of the designated doctor, and that the hearing officer erred in not including wages from a second job in AWW. The respondent (carrier) responds that the designated doctor's impairment rating has presumptive weight because the great weight of the medical evidence was not contrary to the report of the designated doctor and further responds that wages from another job are not to be included in AWW.

DECISION

The decision of the hearing officer is affirmed.

The claimant testified that on (date of injury), she was injured while working for her employer, Nutrition and (Employer A), when she slipped and fell on her buttocks while carrying a tray of food. The claimant had worked for Employer A since 1988. She normally worked about four hours per day for Employer A at an hourly wage of $4.75. The claimant also had preinjury employment as a school bus driver with the (Employer B). She has worked for Employer B for about 13 years. She normally worked about five to six hours a day for Employer B at an hourly wage of $9.50. After her injury, the claimant did not return to employment with Employer A because of a restriction on the amount of weight she could lift; however, the claimant did return to her job with Employer B in April 1991 and has continued at that job. The claimant was initially treated by (Dr. T), who referred her to (Dr. G). The claimant then began treatment with (Dr. D). The Texas Workers' Compensation Commission selected (Dr. M), as the designated doctor.

The claimant contends that the hearing officer erred in basing her AWW only on her preinjury wages from Employer A and in not including in AWW her preinjury wages from Employer B. We disagree. Our decision in Texas Workers' Compensation Commission Appeal No. 91059, decided December 6, 1991, is dispositive of the issue presented. In Appeal No. 91059 we held that the 1989 Act does not authorize consideration of concurrent employments in the calculation of AWW. *See also*, Texas Workers' Compensation Commission Appeal No. 93343, decided June 14, 1993 (AWW is based solely upon the wages earned from the employer in whose service the injury was sustained; wages earned in a concurrent employment held on the date of injury are disregarded for purposes of

computing AWW).

The claimant next contends that the impairment rating assigned by Dr. M, the designated doctor, was overcome by the great weight of the medical evidence. We disagree. Section 408.125(e) (formerly Article 8308-4.26(g)) provides that, if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. Dr. M, the designated doctor, assigned the claimant a zero percent impairment rating in a Report of Medical Evaluation (TWCC-69) dated July 12, 1993, after performing a physical examination and reviewing medical reports. He noted that the radiologist had reported that the claimant's MRI scan of her lumbar spine done in May 1991 was normal. Dr. M's opinion is supported by the opinion of Dr. T who had assigned the claimant a zero percent impairment rating in November 1991. Dr. G did not render an opinion concerning an impairment rating. Dr. D reported that an MRI scan done in January 1993 was normal and diagnosed degenerative L5-S1 arthritis. In a report dated May 11, 1993, Dr. D stated that "her [the claimant's] physical impairment, as it stands, with her osteoarthritis and her left leg radiculitis, fall into 10% of her body. Permanent physical impairment." Having reviewed the evidence, we conclude that the hearing officer's finding that the designated doctor's assignment of a zero percent impairment rating was not overcome by the great weight of contrary medical evidence, and her conclusion that the claimant has a zero percent whole body impairment, are supported by sufficient evidence. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992, and Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge