APPEAL NO. 93727

On June 28, 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 only issue at the hearing was the impairment rating of the appellant (claimant). The hearing officer determined that the claimant's impairment rating is six percent as reported by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant disagrees with the hearing officer's decision. The respondent (carrier) responds that the claimant's appeal was not timely filed and that the evidence supports the hearing officer's decision.

DECISION

The decision of the hearing officer is affirmed.

The claimant's appeal was timely filed. Section 410.202 provides that "[t]o appeal the decision of the hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." The hearing officer's decision was mailed to the claimant on July 29, 1993. The claimant does not say when he received the decision, thus he is deemed to have received the decision on August 3, 1993, under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)). The claimant's appeal is postmarked August 17, 1993, and was received by the Commission on August 19, 1993. Consequently, the claimant's appeal is presumed to be timely filed under Rule 143.3(c) since the appeal was mailed on or before the 15th day after the date of receipt of the hearing officer's decision and the appeal was received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. The carrier points out that the claimant did not send a copy of his appeal to the carrier, but acknowledges that the Commission sent it a copy of the appeal on August 19, 1993. The claimant's failure to properly serve the carrier with a copy of his appeal does not affect the timeliness of the appeal or otherwise prevent its consideration, although it may extend the time for the response to be filed. *See* Texas Workers' Compensation Commission Appeal No. 92397, decided September 21, 1992; and Texas Workers' Compensation Commission Appeal No. 91120, decided March 30, 1992.

The claimant testified that he was injured while working for his employer, (employer), on (date of injury), when he fell though a ceiling after receiving an electrical shock. He was in an attic using a drill to install a security system at the time of the accident. There was no dispute that the claimant sustained a compensable injury. The claimant testified that he was taken to a hospital emergency room on (date of injury) and then began treatment with (Dr. L) on February 6, 1992. The claimant said that Dr. L treated him for back spasms, a sore elbow, and his shoulder, and that he had about two and one-half weeks of physical therapy. He related that Dr. L referred him to (Dr. M) for an evaluation, an EMG, and an

MRI. The claimant said he was released to limited work by Dr. L on April 27, 1992. The claimant indicated that at about the time he was released to limited work, Dr. L said he had reached maximum medical improvement (MMI) and that he, the claimant, did not dispute that assessment. Neither party offered any medical report of Dr. L reflecting certification of MMI on or about April 27, 1992. The claimant said he returned to work on or about April 27, 1992, and has continued to work since that date with the exception of a brief period when he was laid off. The claimant testified that he has not received any medical treatment for his injury since April 27, 1992 (a report from Dr. L indicates he last examined the claimant on May 19, 1992). The claimant testified that the Commission selected (Dr. S) as the designated doctor. The claimant testified that Dr. S examined his shoulder, examined his range of motion of his shoulder, and took an x-ray of his shoulder. The claimant denied that Dr. S examined his neck. The claimant said he took medical reports of Drs. L and M and a report of MRI findings to Dr. S. After he was notified that Dr. S assessed a six percent impairment rating, the claimant said he called Dr. L's secretary and asked her to have Dr. L write him a letter. The claimant testified that his back and elbow problems have resolved but that he still has problems with his shoulder and has pain in his neck.

A medical report dated March 2, 1992, reflected that the claimant had MRI scans of his right shoulder and skull done on that date. The report stated that the scan of the shoulder showed some minimal degenerative change about the right acromioclavicular joint as well as mild to moderate degenerative change about the inferior glenoid labrum. The scan of the skull was within normal limits.

The benefit review conference disputed issue form indicated that Dr. S is the designated doctor and the hearing officer found that Dr. S is the designated doctor selected by the Commission, which finding is not disputed on appeal. In a narrative report dated October 5, 1992, Dr. S stated that he saw the claimant on September 29, 1992, for evaluation of the claimant's neck and right shoulder. Dr. S's report reflected that he examined the claimant's neck, including flexion, extension, rotation, and lateral bending testing. The report also reflected that Dr. S examined the claimant's shoulders, performed a neurological examination, tested reflexes and motor power, and examined the claimant's elbows, forearms, wrists, hands, and fingers. The report also indicated that Dr. S took x-rays of the right shoulder and reviewed x-rays of the cervical spine. As previously mentioned, Dr. S also had medical reports of Drs. L and M and the report of the results of the MRI scans for review. Dr. S diagnosed cervical strain and right shoulder sprain. Dr. S stated that in his opinion the claimant has six percent "partial permanent disability to the cervical spine and he reached maximum medical improvement in August, 1992." In an undated Report of Medical Evaluation (TWCC-69) Dr. S certified that the claimant reached MMI in August 1992, with a six percent whole body impairment rating.

In a letter dated October 31, 1992, a claims adjustor for the carrier wrote to Dr. S stating that she had reason to believe the claimant may have reached MMI, and asked Dr.

S to complete a TWCC-69 if the claimant had reached MMI. The letter then reviews certain reporting requirements for doctors who certify MMI, the definition of impairment rating, and the fact that impairment rating must be based on the second printing, dated February, 1989, of the Guides to the Evaluation of Permanent Impairment, third edition, published by the American Medical Association (which is the edition of the AMA Guides specified in Section 408.124).

In a TWCC-69 dated February 8, 1993, Dr. L assigned the claimant a 30% impairment rating. Dr L stated that Dr. S's findings of no motor sensory or neurological deficit and normal strength were considerably different than what he, Dr. L, had found in an examination of the claimant done on May 19, 1992. The claimant testified that he did not see Dr. L on February 8, 1993, and it appears from Dr. L's report that May 19, 1992, was the last date Dr. L examined the claimant.

As previously noted, the only issue at the hearing was the claimant's impairment rating. The hearing officer determined that Dr. S's assignment of a six percent impairment rating was not contrary to the great weight of the other medical evidence, and further determined that the claimant's correct impairment rating was six percent of the whole body. Having reviewed the record we conclude that the hearing officer's determinations are supported by sufficient evidence and are not against the great weight and preponderance of the evidence.

Pursuant to Section 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 determination of 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.

Although we discourage the parties from having unilateral contact with the designated doctor (aside from the examination and evaluation of the claimant by the designated doctor) as such contact may taint the impartially of the designated doctor, we do not view the carrier's letter to the designated doctor of October 31, 1992, as having "influenced" the designated doctor's findings in this case as contended by the claimant. First, the designated doctor had already made his findings as evidenced by his report of October 5, 1992. Second, there is no indication that the designated doctor changed his opinion after receiving the letter. Third, except for the statement that the claims adjustor

had reason to believe that the claimant may have reached MMI, which was not an issue at the hearing, the letter contains no facts or opinions relating to the claimant's injury, treatment, or medical condition whatsoever.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge