APPEAL NO. 93781

This appeal is brought pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 3, 1993, in (city), Texas, (hearing officer) presiding as hearing officer. The hearing officer, finding that the great weight of the other medical evidence was not contrary to the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission) to examine appellant (claimant), concluded that, consistent with such report, claimant reached maximum medical improvement (MMI) on April 1, 1993, with a zero percent whole body impairment rating (IR). In his request for review, claimant asserts that he has not reached MMI and that he is still in pain, unable to perform his job and other life activates without discomfort. He asks that temporary income benefits (TIBS) be restored until had can return to his pre-injury work or that he be retrained for lighter duties. The respondent (carrier) argues on appeal that the hearing officer's decision is supported by the credible evidence and that the hearing officer reached the correct decision in giving presumptive weight to the medical report of the designated doctor.

DECISION

Finding the evidence sufficient to support the hearing officer's decision, we affirm.

It is undisputed that the claimant suffered an injury to his back in the course and scope of his employment on (date of injury), while loading merchandise for his employer. That same day he went to the emergency room of a local hospital where x-rays were taken. (Dr. C), his treating doctor, treated him conservatively with physical therapy for six weeks. Because claimant was still in pain, an MRI of the lumbar spine was performed in August, 1992. It was normal and showed no pathology. A previous x-ray in June, 1992, was also normal.

(Dr. F), a carrier selected doctor, examined claimant and his medical records on November, 12, 1992, and concluded that the claimant "probably had an unverifiable soft tissue injury. . . ." By means of a Report of Medical Evaluation (TWCC-69), Dr. F certified MMI on November 12, 1992, and a zero percent IR "due to the absence of demonstrable objective pathology." Subsequently, Dr. C referred the claimant to (Dr. A), an Associate Professor in the Department of Neurosurgery at the University of Texas Medical Branch at (city), who concluded on January 26, 1993, that the claimant "has a purely mechanical lower back strain with no neurological involvement." He deemed surgery inappropriate and recommended he "continue with his conservative treatment program." On February 3, 1993, Dr. C stated his basic agreement with Dr. F's physical findings, but noted the claimant's continuing complaint of great pain. Although Dr. C conceded that the claimant's work "was really not that heavy," he recommended "a real heavy work conditioning program." He completed a TWCC-69 which estimated a future MMI of "approximately 6 weeks after date of 1st treatment of work conditioning program." Claimant began work conditioning on February 15, 1993, but stopped after two weeks. The goals were not met and the therapist recommended behavior modification and retraining. On April 7, 1993, (Dr. P), a Commission appointed designated doctor, diagnosed lumbosacral strain with no

evidence of fracture, disc herniation or distal radiculopathy. He determined MMI as of April 1, 1993, with a zero percent IR. Finally, on April 23, 1993, Dr. C released the claimant for return to work with a 10 pound weight carrying limitation on occasion and a five pound limit for repetitive lifting. The employer has indicated there is no position available with these limitations, but it will have a position when the claimant can return to full duty. Claimant is currently employed as a car salesman.

The claimant disputes Dr. P's findings of MMI and IR based on the above described evidence of his treating physicians and his inability to perform normal life activities, including walking and lifting without pain.

Section 401.011(30) defines MMI for purposes of this appeal as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated. . . ." The Appeals Panel has held that this does not mean, in every case, that the injured worker is completely free of pain or impairment upon reaching MMI, or that the injured worker is able to return to the prior occupation. *See* Texas Workers' Compensation Commission Appeal No. 92394, decided September 17, 1992. The ultimate determination of the achievement of MMI and degree of impairment must be based on medical evidence. *See* Texas Workers' Compensation Commission Appeal No. 92312, decided August 19, 1992. A determination of MMI and IR by a Commission appointed designated doctor is presumptively valid "unless the great weight of the other medical evidence is to the contrary." Sections 408.122(b) and 408.125(e). The hearing officer, as the finder of fact, is the sole judge of the weight and credibility of the evidence. Section 410.163(b). Only if we determine that the evidence is so weak or the finding so against the great weight and preponderance of the evidence as to be manifestly erroneous and unjust do we reverse. In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

The hearing officer, after a review of the evidence, found that the great weight of the other medical evidence in this case was not contrary to Dr. P's certification of MMI and IR and therefore gave his report presumptive weight. The hearing officer determined that the claimant reached MMI on April 1, 1993, and had zero percent IR. We have carefully reviewed the hearing record and are satisfied the evidence is sufficient to support the hearing officer's determination.

The decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge