APPEAL NO. 93824
FILED OCTOBER 27, 1993

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01, *et seq*.). A contested case hearing (CCH) was held on August 17, 1993, in [City], Texas, with [hearing officer] presiding as hearing officer. The issues at the CCH were whether the appellant (claimant) reached maximum medical improvement (MMI); his correct impairment rating (IR); and his average weekly wage (AWW). The hearing officer determined that the designated doctor's report had presumptive weight and found that the claimant reached MMI on March 15, 1993, with a zero percent IR and that claimant's AWW was $590.00. The claimant appeals only the determination of MMI contending that he is not yet at a point where he needs an IR, and argues that MMI is premature because his later treating doctor was unable to perform EMG testing; that he (claimant) did not have physical therapy; and that, because he is severely depressed, he should have had one year of psychiatric treatment before a determination of MMI was made. The respondent (carrier) urges that the claimant's appeal should be dismissed for failure to clearly and concisely rebut each issue that he wishes to challenge as required by Section 410.202(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(2) (Rule 143.3(a)(2)). Carrier further argues that the decision of the hearing officer is supported by adequate evidence.

DECISION

The decision of the hearing officer is affirmed.

The carrier first asserts that the claimant's request for review should be dismissed for failure to comply "with the applicable briefing rules. . . ." We have noted in applying Section 410.202(c) and Rule 143.3(a)(2) that the validity of pleadings in administrative proceedings are not determined by the "technical niceties" of civil trial and appellate practice. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992. No particular form of appeal is required and an appeal, though terse and inartfully worded, will be accepted. Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993. We have also held that a pro se claimant's request for review which did no more than say "I hereby appeal the decision of the hearing officer" was adequate to invoke the appellate jurisdiction of the Appeals Panel. Texas Workers' Compensation Commission Appeal No. 92292, decided August 17, 1992. The claimant's appeal in this case goes beyond a mere statement of disagreement with the decision of the hearing officer to identify the specific issues of MMI and IR for which he seeks review, and contains the reasons why he seeks review. We have never demanded that an appellant do more. Based on our review of the record in this case and the limited number of issues, we conclude that this

appeal meets minimum statutory and regulatory standards and has not deprived the respondent of the opportunity to meaningfully respond. *See* Appeal No. 92292, *supra*.

It is undisputed that the claimant, a truck driver, injured his back in the course and scope of his employment on [date of injury], when he hit his back on a trailer. His last day at work was September 7, 1992. Since his injury, the claimant has been treated or examined by at least four doctors. A physical capacity evaluation of the claimant was begun on August 8, 1992, but never completed because the claimant refused to attend therapy sessions. On August 28, 1992, [Dr. B] diagnosed lumbar strain with degenerative disc disease. He also reported that the claimant "seems to greatly exaggerate his complaints and body movement." He determined that the claimant reached MMI on August 28, 1992, with a seven percent IR "due to his [claimant's] complaints of severe pain" and released him to light duty (40 pound lifting restriction). Dr. B then discharged the claimant from further care.

Claimant sought treatment from [Dr. F]. Dr. F determined that the claimant reached MMI on September 17, 1992, with a five percent IR attributable to the lumbar spine. The objective clinical findings on which he based this IR were length of disability, area of injury, and findings on objective neurologic evaluation. His specific diagnoses were based on the claimant's history, physical examination and imaging tests and range of motion studies "where applicable."[1] He released the claimant to work without restrictions. Dr. F referred the claimant to [Dr. M] for entry into a physical therapy program. Due to "continued psychiatric difficulties that are barring this [claimant's] resolution of difficulties following a work-related injury," Dr. M referred the claimant for in-patient treatment of depression and alcoholism. The claimant declined to be admitted to the program. According to Dr. M, the claimant routinely failed to attend physical therapy sessions because they engendered too much pain and insisted at one point he was paralyzed, behavior described by Dr. M as "totally manipulative with no neurologic deficit noted." By letter of February 15, 1993, to Dr. F, Dr. M reported that the claimant responded well to counseling and antidepressant medication and concluded:

> The [claimant's] current motivation appears to be a desire to entice his wife back into his life with adolescent, manipulative behavior . . . work and productivity are far from his first priorities at this time. He has certainly had an adequate soft tissue healing period, has no discernable surgical pathology, was originally found to be at MMI by [Dr. B] in 9/92, and has proven that his psychiatric condition is pre-existing and that his problems with rehabilitation currently are based on manipulation and extraneous external factors.

[1]He determined that range of motion and strength loss tests were invalid.

As such, we believe we have no choice but to confirm the [MMI] determination of [Dr. B] from 9/92, and re-evaluate his impairment rating on the basis of current appearance.

On March 5, 1993, [Dr. O], a Commission appointed designated doctor,[2] examined the claimant. An MRI of the claimant's spine, reviewed by Dr. O showed "only some degenerative disc disease, but otherwise negative." In Dr. O's opinion, the response of the claimant to range of motion and motor strength tests were "fallacious." He found the claimant reached MMI on March 5, 1993, with a zero percent IR.

The claimant testified at the CCH that he had not reached MMI because he was still in severe pain in his back, legs, neck, thighs and arms. He introduced treatment records from the county hospital district which covered the period from February 11, 1993, through July 26, 1993. X-rays of the claimant's thoracolumbar spine taken on May 7, 1993, showed kyphosis (abnormally increased convexity), possibly merely positional, but no abnormality of the vertebrae. Small spurs were also visible. Slight scoliosis and wide joint spaces with some cupping of the vertebrae were noted. The claimant also introduced a statement from [Dr. MA], a surgeon, that repeated attempts to obtain authorization for an EMG and physical therapy from the carrier were denied and a report of psychiatric evaluation of the claimant, prepared at the request of the Texas Rehabilitation Commission by [Dr. P]. This report notes that since his injury, the claimant "has not been able to get around very well and has pain in his upper and lower back and pain down his leg. . . ." He diagnosed a chronic, severe, major depressive disorder "[b]ecause of his back injury and his not being able to get back to work." On appeal, the claimant again contends that the hearing officer's decision on MMI was wrong because the carrier would not pay for Dr. MA, his treating doctor, to conduct EMG testing nor for physical therapy. He requests one year of psychiatric treatment before he is certified at MMI.

Pursuant to Sections 408.122(b) and 408.125(e) of the Labor Code, the report of a designated doctor on the issues of MMI and IR has presumptive weight unless the hearing officer finds the "great weight" of the medical evidence is to the contrary. Under this standard, it requires more than a preponderance of the evidence to overcome the designated doctor's report. See Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Only the great weight of medical evidence can reverse this presumptive status. Texas Workers' Compensation Commission Appeal No. 92312, decided August 19, 1992. A claimant's nonmedical testimony or evidence about his condition does not alone provide a sufficient basis to overcome this presumption. In addition, the hearing officer is the sole judge of the relevance and

[2]The parties stipulated at the CCH that Dr. O was designated by the Commission to serve as a designated doctor in this case.

materiality of the evidence and of its weight and credibility and the inferences to be drawn therefrom. Section 410.165. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 630 (Tex. 1986).

In the case under appeal, Dr. O found MMI as of March 5, 1993, the date of his examination and rendered an IR of zero percent. Three other doctors gave the claimant a higher rating. Dr. B, in a Report of Medical Evaluation (TWCC-69), which bears what is apparently a signature stamp and cursive narrative entries not in his handwriting, gave a seven percent IR "due to his complaints of severe pain" and an MMI of August 28, 1992. In a letter of the same date, Dr. B states that the claimant's limited range of motion "appears to be greatly exaggerated." Dr. F, in a Specific and Subsequent Medical Report (TWCC-64) gave an IR of five percent with an MMI of September 17, 1992. He applied the five percent to a disorder of the lumbar spine and referred to a "attached medical note" which was not in the record. He also found the claimant's range of motion testing invalid. Dr. M, obviously frustrated by the claimant's decision "to waste your opportunity for rehabilitation," adopted Dr. B's determination of MMI and stated in a letter of February 15, 1993, to Dr. F, that the claimant "has certainly had an adequate soft tissue healing period, has no discernable surgical pathology. . . ." He also refers in this letter to Dr. F to "TWCC forms" provided for Dr. F's review. We are unable to determine from the evidence to which forms Dr. M is referring. In our opinion, none of this medical evidence rises to the "great weight" necessary to defeat the presumption of validity afforded the designated doctor's report. The two MMI dates given by Dr. B and Dr. F are clearly consistent with Dr. O's later MMI date. The IRs of both Dr. B and Dr. F are somewhat self-impeaching in that they both discount the range of motion tests yet give no other basis for the IRs they assign.

The claimant in his challenge on appeal to Dr. O's determinations regarding his back injury argues that his new treating doctor, Dr. MA, should have been given the opportunity to conduct EMG testing and enter him in physical therapy before Dr. O made his determinations. The designated doctor holds a "unique position" under the 1989 Act (*see* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992) to expeditiously resolve disputes among medical reports and various doctors. Dr. O's evaluation of the claimant was based on a professional judgment that, from his own examination and review of existing treatment records, there was sufficient information to apply the American Medical Association Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February, 1989 (Guides), to the claimant. We find no merit in claimant's contention that Dr. O's certification was invalid because it was made without input from Dr. MA.

The claimant also argued at the CCH and on appeal, that his current severe depression was the result of his on the job back injury.[3] His psychiatrist, [Dr. P], who, according to the testimony of the claimant, was provided to him by the Texas Rehabilitation Commission, after an office visit with the claimant on July 13, 1993, diagnosed a "Major Depressive Disorder - Chronic - Severe" and stated:

> Because of his back injury and his not being able to get back to work, he has become progressively depressed and he is depressed severely. . . . This man needs intensive and continued treatment for depression and passably physical treatment for an extended period of time. It is possible that in a year or so of intensive psychiatric management and physical care, he might be able to return to gainful work.

Consistent with this recommendation, the claimant contends that MMI cannot be determined before one year of psychiatric treatment is completed.

There was substantial evidence in the record that the claimant's severe depression pre-existed his back injury, that he had made significant recovery under anti-depressant medication, that he was an alcoholic and under severe stress from a marital breakup, and that he was, ultimately, manipulative and unwilling to undergo recommended mental or physical therapy. Dr. P's report, relied on by the claimant, makes no mention of this history. Hence, under the facts of the present case, the hearing officer's reliance on the MMI determination of the designated doctor was not erroneous.

[3]Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease . . . naturally resulting from the damage or harm."

For the above reasons, the decision of the hearing officer is affirmed.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge