APPEAL NO. 93851

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.011 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.) A contested case hearing was held on August 27, 1993, in (city), Texas to determine whether the appellant, hereinafter claimant, reached maximum medical improvement (MMI), and had a five percent impairment rating, in accordance with the February 8, 1993, report of Dr. P, the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals the determination of hearing officer CM that the designated doctor's certification of MMI and impairment rating were not against the great weight of the other medical evidence.

DECISION

We affirm the decision and order of the hearing officer.

The claimant, who had been employed by the Texas Department of Criminal Justice, suffered an injury to her back, neck, and shoulder on (date of injury). The first doctor she saw was Dr. T, then she later began treating with (Dr. S) in October 1991 and was still treating with him at the time of the hearing. The record shows that Dr. S ordered tests, one of which, according to a letter from Dr. S, showed evidence of abnormalities at the L3-4 and L4-5 levels; however, the reports of the various studies were not included in the record. Dr. S also prescribed medication and physical therapy. The claimant testified, and Dr. S's records reflect, that surgery was discussed as a possible option but that Dr. S told her there was no guarantee the surgery would be successful. The claimant also said the carrier cut off payment for her physical therapy before it was completed, although such therapy was later reinstated.

On July 6, 1992, carrier's doctor, (Dr. L), certified that claimant had reached MMI with a five percent impairment rating. Dr. L reviewed claimant's studies and stated in part that:

> The discogram was said to be positive at L3-4, however, this is somewhat difficult to see in the films and I was not present to witness any reproduction of symptoms...I would assign to her a 5% impairment of the lumbar spine based on her injury with none to minimal degenerative changes on structural test.

Because claimant disputed Dr. L's determination, the Commission appointed (Dr. P), an orthopedic surgeon, as designated doctor. Dr. P found that the claimant reached MMI on February 8, 1993, with a five percent impairment rating. His report of that date summarized claimant's studies, noted changes at some levels of her spine, but stated that there was no evidence of herniation, fracture, or distal radiculopathy.

On August 12, 1992, Dr. S stated that he disagreed with Dr. L's determination that claimant had reached MMI. On March 31, 1993, he reiterated that MMI had not been reached.

The hearing officer found that Dr. P's opinion on MMI and impairment was not against the great weight of the other medical evidence, and he thus determined the claimant's MMI and impairment rating in accordance with Dr. P's report. The claimant's appeal states that she wishes to appeal the hearing officer's decision concerning impairment rating. We will interpret this as challenging the sufficiency of the evidence to support Dr. P's five percent.

The 1989 Act provides that the report of a designated doctor appointed by the Commission is entitled to presumptive weight, and the Commission shall base its determination of MMI and impairment upon such report, unless the great weight of the other medical evidence is to the contrary. Sections 408.122(b) and 408.125(e). We have previously emphasized the unique position that the designated doctor's report occupies under the workers' compensation system, and the fact that no other doctor's report--including the report of a treating doctor--is given such special, presumptive status. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992; Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. We have stated that to overcome a designated doctor's report requires more than a mere balancing of the evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Further, we have held that a designated doctor's opinion that carries presumptive weight will be set aside only if the great weight of medical evidence is to the contrary. Texas Workers' Compensation Commission Appeal No. 92312, decided August 19, 1992.

The medical evidence in this case included the treating doctor's determination that claimant had not reached MMI (and hence, that no impairment rating was assigned) and the carrier's doctor's determination that claimant's impairment rating was five percent. With the evidence in this posture, we do not find that the hearing officer erred in accepting the report of the designated doctor and finding that the "great weight" of the medical evidence was not contrary to that opinion. For the foregoing reasons, we affirm the hearing officer's decision and order.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge