APPEAL NO. 93857

This appeal arises under 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 was held in (city), Texas, on August 24, 1993, to determine whether the appellant, hereinafter claimant, had reached maximum medical improvement (MMI); if so, on what date; and if the claimant has reached MMI, what is her impairment rating. The claimant appeals from hearing officer (hearing officer) determination that she reached MMI on November 18, 1992, with a whole body impairment rating of zero percent, as found by the designated doctor. The respondent, hereinafter carrier, contends that the hearing officer's decision should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The claimant, who testified through an interpreter, was injured on (date of injury). On that date, while employed as a squash trimmer by (employer), she felt back pain as she bent over a conveyer belt to spread out squash that had accumulated on the belt. There was no question but that she suffered a compensable injury and that she notified her employer.

The claimant first saw a doctor in (state), then began treating with a chiropractor, (Dr. P). She later began seeing a neurologist, (Dr. M), but continued her chiropractic treatment at the same time, with the knowledge and concurrence of Dr. M. Dr. P's records show he recorded claimant's complaints of neck, mid-back, and low back pain, and treated her for cervical, thoracic, and lumbar sprain/strain and cervicobrachial syndrome. Dr. M reported chronic neck and upper back pain along with muscle spasm, and he ordered several tests, including x-rays which showed "evidence of degenerative changes;" EMG and nerve conduction velocity studies which were normal, with no evidence of radiculopathy; a thoracic MRI which was normal; and a cervical MRI which stated "there is a protruding disc at the level of C3-C4 although the posterior longitudinal ligament remains intact."

Dr. P completed a Report of Medical Evaluation (Form TWCC-69) which found claimant had reached MMI on July 13, 1992, with a 12% impairment rating due to her lumbar spine. Dr. M's TWCC-69 certified MMI on September 28, 1992, with a 10% whole body impairment, comprised of five percent each for the cervical and thoracic spines. Claimant was also examined by carrier's doctor, (Dr. Kr), who found MMI as of July 13, 1992, and who stated with regard to impairment rating that "No disability can be projected." Among other things, Dr. Kr stated in his report that "examination of the cervical spine revealed no external abnormality with a functional range of motion in all directions. . . Examination of the thoracic spine merely produced subjective response on palpation." Dr. Kr stated his opinion that the claimant had sustained a cervical and thoracic sprain "which in all reasonable medical probability does not cause cervical or thoracic disk herniations."

The claimant was referred to a Commission-appointed designated doctor, (Dr. Ke).

In a report dated November 18, 1992, Dr. Ke summarized claimant's medical records and the results of her studies, noting the possible protruding disc at C3/4 but stating that he believed this to be degenerative and that claimant's clinical examination was normal. He also stated that "[Dr. M] thought that her only problems were in her thoracic spine and I find no evidence to substantiate a problem in this area. . . I do not think her neck symptoms are related to her on job (sic) injury and I do feel that the thoracic pain from her injury has now abated and does not warrant further treatment." He advised further observation of the cervical spine, with use of moist heat and anti-inflammatory medications. Dr. Ke found claimant to have reached MMI on November 18, 1992, with zero percent impairment.

Dr. M's records show he issued several off-work slips stating claimant was unable to work; the most recent one in the record was written the day before the hearing.

The claimant contended at the hearing and contends on appeal that she cannot have reached MMI because she continues to have pain. She further argues that the designated doctor's analysis does not reflect her condition.

According to the 1989 Act, 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). The hearing officer determined that the findings of Dr. Ke, the designated doctor, that claimant had reached MMI on November 18, 1992, with a whole body impairment rating of zero percent, were not overcome by the other medical evidence.

Our review of the record does not indicate that the hearing officer erred in making this determination. 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. Further, 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.

The medical evidence in this case is conflicting basically as to claimant's degree of impairment and as to the part of the spine rated. (We note that all the doctors whose reports were in evidence found MMI to have been reached, although on different dates.) While the designated doctor assigned a zero percent impairment rating, that was based upon an evaluation which considered, among other things, the MRI results and claimant's neck and thoracic spine complaints for which Dr. Ke declined to assign any impairment. It is true that a portion of Dr. M's impairment rating was due to claimant's cervical spine, based upon the MRI findings. However, Dr. P, who was treating claimant concurrently for both neck and back pains, found impairment based only upon claimant's lumbar spine. The carrier's doctor also assigned no impairment. Given this state of the evidence, we agree with the

hearing officer that the "great weight" of the medical evidence is not contrary to Dr. Ke's report.

With regard to claimant's continuing pain, this panel has held that a finding that a claimant has reached MMI will not, in every case, mean that the injured worker is completely free of pain nor that he or she is able to return to the prior occupation. Texas Workers' Compensation Commission Appeal No. 92394, decided September 17, 1992. As noted above, all of the doctors in this case found that claimant had reached this status, which the 1989 Act defines, in pertinent part, 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." Section 401.011(30).

The hearing officer's decision and order are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge