APPEAL NO. 93910

This case is before us again after a contested case hearing on remand was held on September 2, 1993, in (city), Texas, pursuant to our decision in Texas Workers' Compensation Commission Appeal No. 93410, decided July 8, 1993. (hearing officer) presided as 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) (formerly V.A.C.S. Article 8308-1.01 *et seq*.). The hearing was remanded for further consideration and development of the evidence on the issues of whether the appellant (claimant) reached maximum medical improvement (MMI) and the claimant's impairment rating. On remand, the hearing officer determined that the claimant reached MMI on January 4, 1993, with an eight percent impairment rating as determined by (Dr. P), the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant disagrees with the hearing officer's decision.

DECISION

The decision of the hearing officer is affirmed.

The evidence presented at the first hearing conducted on April 29, 1993, is set forth in Appeal No. 93410, *supra*, and will not be repeated at length herein. Succinctly, the claimant was injured at work on (date of injury). At the request of the carrier, the claimant was examined by (Dr. L) on September 8, 1992, who diagnosed lumbosacral strain and morbid obesity and said that obesity was the claimant's major problem. Dr. L completed a Report of Medical Evaluation (TWCC-69) wherein he certified that the claimant reached MMI on September 8, 1992, with a five percent impairment rating. On October 2, 1992, (Dr. D), the claimant's treating doctor, completed a TWCC-69 wherein he certified that the claimant reached MMI on October 2, 1992, with a 16% impairment rating. Dr. D diagnosed the claimant as having chronic lumbar spinal syndrome. On November 3, 1992, the claimant disputed Dr. L's impairment rating and the Commission selected Dr. P as the designated doctor to determine the claimant's impairment rating. In a TWCC-69 dated January 4, 1993, Dr. P certified that the claimant reached MMI on January 4, 1993, with an eight percent impairment rating. Dr. P's diagnosis was lumbar sprain. The claimant testified at the first hearing that Dr. P did not examine him.

In Appeal No. 93410, *supra*, we held that the hearing officer erred in determining that Dr. L's certification of MMI became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) because we determined that the claimant had timely disputed Dr. L's assigned impairment rating (which was the first impairment rating assigned to the claimant) within 90 days. We also expressed our concern over the hearing officer's finding that the claimant had an eight percent impairment rating as reported by Dr. P, the designated doctor, because the claimant had unequivocally testified that Dr. P had not examined him and Dr. P's report was unclear on that matter. We reversed the hearing officer's decision and remanded for further consideration and development of the evidence.

On July 26, 1993, the hearing officer wrote to Dr. P concerning his evaluation of the

claimant and in a letter dated August 27, 1993, Dr. P responded that he did examine the claimant on January 4, 1993, and that the examination included evaluation of gait, palpation, range of motion of the spine, motor examination, reflex examination, sensory examination, and straight leg raising test. Dr. P further stated that the claimant was also seen by a licensed physical therapist for range of motion testing of the lumbar spine and that he, Dr. P, reviewed and confirmed the findings of the physical therapist through his own physical examination of the claimant. At the hearing on remand, the claimant continued to insist that Dr. P did not examine him.

In his decision following the hearing on remand, the hearing officer determined that the claimant reached MMI on January 4, 1993, with an impairment rating of eight percent as reported by the designated doctor. While the hearing officer gave presumptive weight to the designated doctor's impairment rating and found that the great weight of the other medical evidence was not contrary to that assessment, he noted that he did not give presumptive weight to the designated doctor's determination of when the claimant reached MMI because the designated doctor was asked to determine impairment rating only. Nevertheless, the hearing officer concluded that the designated doctor's determination as to MMI was correct.

Pursuant to Section 408.125(e), the report of a designated doctor chosen by the Commission regarding an impairment rating has presumptive weight and the Commission must base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. We have previously held that a designated doctor's report cannot be overcome by just equally balancing evidence or by a preponderance of the evidence; rather, the great weight of the medical evidence must be contrary to the report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. The hearing officer judges the weight and credibility of the evidence. Section 410.165(a). Contrary to the claimant's assertion at the hearing, the designated doctor has unequivocally stated that he gave the claimant a physical examination as part of his evaluation and the hearing officer found that the designated doctor did in fact examine the claimant. Having reviewed the record, we conclude that the hearing officer's findings and conclusions in regard to impairment rating are supported by sufficient evidence and are not against the great weight of the evidence.

In regard to MMI, we have previously held that it is prudent, if not essential, for a designated doctor who is appointed to evaluate a claimant for an impairment rating to also render an opinion on MMI inasmuch as an impairment rating is not assessed until MMI is reached. *See* Texas Workers' Compensation Commission Appeal No. 92517, decided November 12, 1992; Texas Workers' Compensation Commission Appeal No. 93124, decided April 1, 1993. However, in accordance with our decision in Texas Workers' Compensation Commission Appeal No. 93710, decided September 28, 1993, and as noted by the hearing officer, since the designated doctor was appointed to determine impairment rating only, his opinion on MMI was not entitled to presumptive weight. On October 2, 1992, Dr. D certified MMI with a 16% impairment rating; however, by January 4, 1993, when the designated doctor examined the claimant and certified MMI, the claimant's impairment rating

was assessed at eight percent with some of the difference in the ratings being attributable to improved range of motion in the latter examination which is some indication that the claimant had further material recovery from or lasting improvement to his injury between October 2, 1992, and January 4, 1993. Having reviewed the record, we conclude that the hearing officer's determination that the claimant reached MMI on January 4, 1993, is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. The hearing officer is responsible for resolving conflicts and inconsistencies in the medical evidence. *See* Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge