APPEAL NO. 93937

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S. art 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on September 27, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) reached maximum medical improvement (MMI) on September 25, 1992, with a zero percent whole body impairment rating (IR) as certified by the Texas Workers' Compensation Commission's (Commission) appointed designated doctor (DD). Claimant appeals urging in essence that she has not reached MMI and that she presented evidence to meet "the burden of great weight over the designated doctor." Respondent (carrier) urges that the evidence is sufficient to support the findings, conclusions and decision of the hearing officer and asks that we affirm.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer and that the great weight of medical evidence is not against the designated doctor's decision, we affirm.

The only issues in this case were whether the claimant had reached MMI and, if so, the correct IR. The evidence in this case is only briefly set out herein as we adopt the fair and adequate statement of evidence in the Decision and Order of the hearing officer. According to medical reports, the claimant sustained a back injury lifting a box at work on (date of injury), and apparently has never returned to work. During the course of her treatment, she saw several doctors and had a number of tests performed, among them an MRI, CT scan, and a myelogram, all of which were determined to be normal. One of her treating doctors indicated in a report dated April 15, 1993, that he "cannot find any condition with this patient that requires any surgery or further medical treatment." A doctor who apparently specializes in arthritis and to whom the claimant was referred by her treating doctor, indicated in a February 1, 1993, letter that he understands from an orthopedic point of view the claimant could return to work but that he felt that "she is having too much generalized pain to be able to return to work." A carrier requested doctor examined the claimant and determined she had reached MMI as early as August 1992 with a zero percent IR. The Commission designated a doctor to examine and evaluate the claimant. The DD certified MMI on September 25, 1992, with a zero percent IR. The claimant indicated that she is presently under psychological treatment and that she is depressed, has chronic pain syndrome, and that the psychologist traces this to her injury.

As indicated, the hearing officer gave presumptive weight to the DD's report and determined that the great weight of the other medical evidence is not contrary thereto. We conclude that he has correctly applied the provisions of Section 408.125(e). The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). Only if we were to determine, which we do not, that his determination was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb his decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20,

1992. As we have held, the DD occupies a unique position in the 1989 Act and that it requires more that a mere balancing of the medical evidence to overcome the presumptive weight attached to his report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We agree that the DD's report in this case was not overcome by the great weight of contrary medical evidence. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge