APPEAL NO. 93946

At a contested case hearing held in (city), Texas, on August 31, 1993, the hearing officer, (hearing officer), determined that the appellant (claimant) reached maximum medical improvement (MMI) on November 19, 1992, with a whole body impairment rating of zero percent consistent with the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). Pursuant to 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*.), claimant has requested our review of the hearing officer's decision indicating her disagreement and stating that she still suffers from low back pain. The respondent (carrier) filed no response.

DECISION

Finding the evidence sufficient to support the hearing officer's factual findings and legal conclusions, we affirm.

Claimant, the sole witness, testified that on (date of injury), while at work, she lifted a tray of switches weighing approximately 20 pounds and felt back pain which she still has. She said she was first seen by (Dr. S). No records of Dr. S were introduced. Claimant stated she was next seen by (Dr. C), a pain management specialist, upon the referral of Dr. S. Dr. C's June 1, 1992, report diagnosed chronic lower back pain, "quite possibly due to an abnormality at L4-L5 and L5-S1 as noted on diskogram," myofibrositis of the lumbar paraspinal muscles and the superior gluteus muscle, SI joint dysfunction, deconditioning, and chronic pain behavior. In an August 21, 1992, follow-up report, Dr. C stated that he has been "unable to control her pain by normal pharmacological means and there may be a significant amount of behavior component mediating her pain." Dr. C planned aggressive physical therapy, occupational therapy, and behavior intervention. In his September 22, 1992, report, Dr. C noted that claimant was "much improved." He noted that claimant was to begin a pain program as soon as possible after which he would address MMI and return to work status.

Claimant also testified that she was examined in November 1992 by (Dr. G), whom the parties acknowledged was the Commission's designated doctor in the case. She inferred this examination was cursory. The Report of Medical Evaluation (TWCC-69) certified that claimant reached MMI on November 19, 1992, with a zero percent impairment rating. Dr. G's notes on the TWCC-69, together with his written narrative report of November 25, 1992, make clear that he performed a physical examination of claimant and reviewed her medical records. Dr. G's impression was low back pain with "large supratentorial component." He felt that "the likelihood of this patient getting better with anything surgical or otherwise is very small."

Claimant also said she was seen by (Dr. T). A TWCC-69 from Dr. T, dated "5/5/93," which the carrier disputed, stated that claimant reached MMI on "4/28/93" with an impairment rating of "7%" for loss of strength and radiculopathy in her lower extremity. Claimant's position was that because she still suffered from back pain, she had not yet

reached MMI, and that if it were determined that she had reached MMI, her impairment rating was greater than the zero percent assigned by Dr. G.

In Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993, we observed:

> It has become clear that many claimants do not understand how they can reach "maximum medical improvement" when they still continue to hurt and suffer from an injury. "Maximum medical improvement" appears to mean complete recovery to the ordinary person. But that is not what it means for purposes of workers' compensation benefits. That term means, under Article 8308-1.03(32)(A) [now Section 401.011(a)] of the 1989 Act, the point at which further material recovery or lasting improvement can no longer be reasonably anticipated, according to reasonable medical probability. When the doctor finds MMI and assesses an impairment, he agrees, in effect, that the injured worker is likely to continue to have effects, and quite possibility pain, from the injury. However, he has determined, based upon his medical judgment, that there will likely be no further substantial recovery from the injury.

We are satisfied that the hearing officer correctly accorded presumptive weight to the designated doctor's report and just as correctly determined that claimant reached MMI on November 19, 1992, with a zero percent impairment rating. The hearing officer is the sole judge of the weight and credibility to be given the evidence (Section 410.165(a)), and it is for the hearing officer to resolve the conflicts and inconsistencies in the evidence. We will not substitute our judgment for that of the hearing officer where the findings are supported by sufficient evidence. Texas Workers' Compensation Commission Appeal No. 93767, decided October 8, 1993. Sections 408.122(b) and 408.125(e) provide that a Commission-selected designated doctor's report shall have presumptive weight and that the Commission shall base the determinations of MMI and impairment rating on that report unless the great weight of the other medical evidence is to the contrary. The Appeals Panel has previously observed that the ultimate determination of the extent of impairment must be made upon medical and not lay evidence. Texas Workers' Compensation Commission Appeal No. 92394, decided September 17, 1992. We have frequently noted the important and unique position occupied by the designated doctor in the resolution of disputes over MMI and impairment ratings. *See* e.g. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. And we have stated that a "great weight" determination amounts to more than a mere balancing or preponderance of the medical evidence (Appeal No. 92412, *supra)*, and that the "great weight" standard is clearly a higher standard than that of a preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 93432, decided July 16, 1993. That Dr. T determined a later MMI date and a higher impairment rating does not amount to the great weight of the other medical evidence being contrary to Dr. G's report.

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge