APPEAL NO. 93978

Pursuant to 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 September 23, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) reached maximum medical improvement (MMI) on November 14, 1992, with a four percent impairment rating (IR) as certified by the Commission-selected designated doctor. Claimant appeals expressing her dissatisfaction with the administration of the 1989 Act and urging that she has not reached MMI for her diagnosed "fibromyalgia" and that the four percent rating is not valid. Respondent (carrier) argues that the designated doctor's report was appropriately accorded presumptive weight and that the evidence is sufficient to support the hearing officer's decision.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, the decision is affirmed.

The only issues in the case were whether the claimant had reached MMI and, if so, her correct IR. The claimant testified that she was injured on (date of injury), in her job as a reservations clerk when, while sitting at her computer, she felt pain in her left hand, arm and shoulder. She also indicated that she was experiencing pain all the way back to 1989. In any event, there did not appear to be any particular event that brought on the pain on. In the ensuing months she was seen by approximately 12 different doctors and health care providers and a number of tests were performed with, according to the claimant, little success in relieving her symptoms. Carpal Tunnel Syndrome was ruled out and ultimately a diagnosis of "fibromyalgia" was made by a doctor she saw shortly before the hearing. Literature admitted as evidence on "fibromyalgia" indicates, basically, that the cause of the condition is generally unknown as is the cure. One article suggests "[i]t is easier to tell (a patient) he had fibromyalgia than to be intellectually honest and say "I can find no reason for your pain, all your tests are normal, it can't be anything serious." In any event, the claimant's treating chiropractor determined that the claimant reached MMI on August 14, 1992, with a 31% IR, relying in part on another chiropractor's rating of impairment. A neurologist, to whom the claimant was referred and who examined her, certified that the claimant reached MMI on "11-14-92" with a four percent IR. Another neurologist who saw the claimant on May 20, 1992, and December 22, 1992, indicated the claimant had not reached MMI. A Commission-selected designated doctor examined the claimant on June 7, 1993, and certified that the claimant reached MMI on November 14, 1992, with a four percent IR.

The hearing officer accorded presumptive weight to the report of the designated doctor and found that the great weight of the other medical evidence presented did not overcome the presumptive weight to be accorded the report of the designated doctor. Section 408.125(e). The complete record and evidence admitted at the hearing has been reviewed. We conclude there is sufficient evidence to support and affirm the hearing

officer's finding that the great weight of the other medical evidence did not overcome the presumptive weight of the designated doctor. We have repeatedly held that the report of a designated doctor occupies a unique position under the 1989 Act and that it requires more than a mere balancing of the medical evidence to overcome its presumptive weight. *See e.g.* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also observed that because an injured worker continues, as here, to experience pain does not mean MMI has not been reached.

Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993. Under the circumstances presented in this case, there is no sound basis to reject the report and certification of the designated doctor. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge