

APPEALS PANEL NO. 94007

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Article 8308-1.01 *et seq.*) (1989 Act). A contested case hearing was held in (City), Texas, on December 1, 1993, to determine the issue of appellant's (hereinafter claimant) impairment rating. The hearing officer, _____, determined that claimant had a two percent impairment rating as assessed by the designated doctor, and that the designated doctor's certification of maximum medical improvement (MMI) and impairment rating were not contrary to the great weight of the medical evidence. The claimant appeals, basically reciting evidence in support of his position. The respondent, hereinafter carrier, replies that the hearing officer's decision should be upheld.

DECISION

We affirm the hearing officer's decision and order.

The claimant testified that he struck the back of his left hand on (Date of Injury), when an elevator on a drilling rig hit the board on which he was standing, throwing him backwards. He said he told his supervisor, who believed claimant was only bruised. Some three or four weeks later, when the swelling had not gone down, the claimant went to his family doctor, (Dr. G), who referred him to (Dr. B); records from these doctors were not in evidence. An MRI study of the wrist performed on December 10, 1991, was reported as normal.

Claimant said he began seeing (Dr. BR), who twice performed surgery on his hand. According to the report of (Dr. C), who was appointed designated doctor, Dr. BR on March 2, 1992, performed a neurectomy of the dorsal sensory branch of the radial nerve of the hand, and on August 10, 1992, he performed a neurectomy on a superficial branch of the nerve and then buried the nerve trunk in the soft tissue of the distal wrist. Because claimant's pain continued, he was referred to (Hospital Name) pain management clinic in January of 1993 where he saw numerous doctors as part of a three week multidisciplinary treatment. (He had earlier received treatment at a (Clinic)). A bone scan indicated changes consistent with reflex sympathetic dystrophy of the right wrist and he was treated with, among other things, medication, therapy and nerve blocks; however, he stated that he suffered a neck injury from a catheter which was placed in his neck. He contended his pain was worse when he left the hospital than when he had entered. Upon claimant's discharge, (Dr. H) wrote that claimant was continuing to complain of pain and that she believed claimant had either a mechanical and/or soft tissue injury which was contributing to his pain condition and limited mobility, and "I cannot explain his limited mobility in the wrist only on the basis of sympathetically maintained pain." Another doctor, (Dr. G), wrote on February 5, 1993, that claimant had been given a wrist device in order to increase his range of motion, and stated that claimant needed to continue to use such device "in order to maintain the progress he has made."

In December of 1992, claimant saw (Dr. K), carrier's doctor, who stated he could not explain claimant's persistent pain but that he felt it did not "look nor did he behave like it is a reflex sympathetic dystrophic hand." He also said that claimant seemed to have had "an inordinate amount of problem necessitating an unusual amount of treatment for what seems to have been an uncomplicated injury." Dr. K recommended a "more simple" course of treatment, including hand therapy, and said that claimant's psychological outlook would be significant in how quickly he recovered.

Dr. BR certified claimant as reaching MMI on March 5, 1993, with a 31% (later amended to 35%) impairment rating. (Dr. BR's associated report, if any, was not included in the evidence.) Because of carrier's dispute of this rating, Dr. C was appointed designated doctor. Dr. C agreed with Dr. BR's date of MMI but assigned a two percent impairment rating. In his report Dr. C said that claimant's physical examination showed "marked symptom magnification and subminimal exertional effort." He reviewed the reports of the doctors who had seen claimant and said he found no objective signs of a dystrophic hand. In a July 21, 1993 letter Dr. BR characterized Dr. C's impairment rating as "absurd" and stated that claimant had a severe case of reflex sympathetic dystrophy involving his right upper extremity.

In his discussion of the evidence, the hearing officer noted that the evidence is conflicting as to whether the claimant has reflex sympathetic dystrophy; he also stated that:

[t]here is no doubt evidence contrary to the finding of the designated doctor. However, it does not constitute a great weight of medical evidence; it only confirms that physicians frequently disagree. This provides no basis upon which to overturn the presumption given the opinions of the designated doctor.

The claimant raises many points in his appeal, including the fact that the designated doctor was a general practitioner and not a specialist as is Dr. BR, and that he did not spend much time examining claimant. He also says most doctors have said he has reflex sympathetic dystrophy, contrary to the designated doctor's opinion. Claimant also contends that there has not been enough attention paid to the complications he suffered from his treatment at (Hospital Name).

The 1989 Act sets up the designated doctor procedures in order to resolve a dispute over whether a claimant has reached MMI and the extent of his impairment. The act provides, however, that the report of such doctor, if appointed by the Texas Workers' Compensation Commission (Commission), shall have presumptive weight and the Commission "shall" base an impairment rating on that report unless the great weight of the other medical evidence is to the contrary. We have previously commented upon the "unique position" and "special presumptive status" that the designated doctor's report is accorded under the Texas workers' compensation system, and the fact that no other

doctor's report, including that of a treating doctor, is entitled to such deference. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. We have also held that the 1989 Act does not require that a designated doctor be of a particular specialty. Texas Workers' Compensation Commission Appeal No. 93062, decided March 1, 1993.

The record in this case reveals a genuine split of opinion among doctors as to the cause and extent of claimant's problems. (Contrary to claimant's assertions that Dr. C spent little time on his physical exam, the report on its face documents what appears to be a thorough examination.) While the opinions of Dr. C and Dr. BR are diametrically opposed, the remainder of the medical evidence (except for Dr. K's opinion, which agreed with Dr. C) is not so strong or overwhelming as would lead us to conclude that it constitutes the "great weight" of the other evidence. To overturn a designated doctor's report, we have held, requires more than a "mere balancing" of the evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided, September 28, 1992. We do not believe that the hearing officer erred in determining that Dr. C's impairment rating was entitled to presumptive weight and had not been overcome.

In upholding the hearing officer's decision, we would note that a finding of MMI and impairment does not require that the injured worker be free of pain or otherwise restored to his pre-injury condition. As this panel stated in Texas Workers' Compensation Commission Appeal No. 92670, decided February 1, 1993:

When the doctor finds MMI and assess impairment, he agrees, in effect, that the injured worker is likely to continue to have effects, and quite possibly 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.

Finally, the claimant contended at the hearing and states on appeal that he has gotten no response from the carrier concerning certain physical problems--including a neck problem from the catheter used at (Hospital)--which he claims arose from the treatment for his injury. The issue of whether this and other problems were themselves a part of claimant's compensable injury was not before the hearing officer and must be raised in another proceeding.

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge