APPEAL NO. 941061

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 5, 1994, a contested case hearing (CCH) was held. The only issue was: "What is the claimant's impairment rating [IR]?" The hearing officer determined that the claimant, who is the appellant in this case, reached maximum medical improvement (MMI) with an eight percent whole body IR, based on the designated doctor's report.

Claimant contends that the designated doctor's opinion was contrary to the great weight of other medical evidence in that the designated doctor failed to include impairment for abnormal motion in the knee joint, contrary to the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Respondent, carrier responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

The claimant did not testify; however, the facts are not in dispute. Claimant drove a delivery truck for (employer), the employer, and on (date of injury), sustained a compensable injury to her left knee when it hit a box. An MRI of the knee revealed evidence of degenerative changes as well as a torn meniscus. The diagnosis was "Torn meniscus . . . aggravated arthritis . . . ." On March 10, 1992, claimant had "orthoscopic [sic] surgery with a partial medial meniscectomy and debridement of the joint." During the procedure "severe degenerative changes" were noted. After claimant failed to respond to physical therapy and had increasing pain in the knee, "a total joint replacement arthroplasty" was scheduled. That procedure was performed by the treating doctor, Dr. (Dr. H) on July 1, 1992.

By Report of Medical Evaluation (TWCC-69), Dr. H certified MMI on January 30, 1993, with a 16% IR. Dr. H arrived at the IR by assessing 20% impairment of the left lower extremity for knee replacement arthroplasty (Table 36(3) of the AMA Guides, page 61), 10% impairment of the left lower extremity for arthritis due to any etiology (Table 36(5)) and 11% impairment for abnormal motion with 120E retained flexion (Table 35), combining the 41% impairment of the lower extremity to reach a 16% impairment of the whole person.

Carrier disputed Dr. H's findings and by letter dated April 14, 1993, the Texas Workers' Compensation Commission (Commission) appointed (Dr. P) as a Commission selected designated doctor to determine MMI and percentage of impairment. Dr. P, by TWCC-69 dated May 7, 1993, certified MMI on May 3, 1993, with an eight percent IR. Dr. P noted claimant's degenerative changes were "so severe as to necessitate the total knee" replacement. Dr. P further noted claimant "had a relatively good functional result from her arthroplasty" and had a 20% impairment and loss of function of the left lower extremity

which equated to an eight percent whole body IR. At a benefit review conference (BRC) there was apparently some concern that Dr. P had reduced the IR because of the existence of pre-existing degenerative arthritis and by letter dated March 29, 1994, the benefit review officer (BRO) wrote Dr. P for clarification of his rating. By letter dated April 8, 1994, Dr. P stated that his IR was based solely on his assessment of the claimant without reduction of "whatever impairment the patient may have had prior . . . ." Dr. P specifically referenced Table 36 of the AMA Guides "Paragraph III" (actually 3) for 20% "permanent impairment and loss of physical function to the left lower extremity." DR. P added "no additional assessment for loss of motion is to be added to that twenty percent."

Claimant argued at the CCH (and on appeal) that she is entitled to 10% (of the lower extremity) for the arthritis, 11% loss of motion per Table 35, 20% for the knee replacement arthroplasty, all as Dr. H had indicated, plus another 10% for the "orthoscopic" surgery for the partial medial meniscectomy performed on March 10, 1992.

The hearing officer found claimant had a 20% impairment of the left lower extremity which equated to an "8% [IR] of the whole body when converted according to Table 42 on page 65 [of the AMA Guides]." The hearing officer disregarded the pre-existing arthritic condition stating "the artificial knee did not have arthritis." Without specifically so stating in the decision the hearing officer at the CCH indicated that claimant would not be entitled to an impairment of the torn meniscus because the subsequent knee replacement arthroplasty replaced the meniscus. The hearing officer made no finding on the loss of motion argument other than to point out that the designated doctor had stated that "no additional assessment for loss of motion is to added to that 20%."

Claimant's principle points on appeal are that she is entitled to the additional 10% (of the lower extremity) for loss of motion pursuant to Table 35, that neither Dr. P nor the hearing officer had given a rationale for excluding that impairment, and that consequently the designated doctor's report is contrary to the great weight of other medical evidence, namely Dr. H's report. Claimant also alleges that she is entitled to the 10% impairment of the lower extremity for her torn meniscus.

Impairment is defined in Section 401.011(23) as anatomic or functional abnormality or loss existing after MMI that results from a compensable injury and is reasonably presumed to be permanent. Regarding claimant's argument that she should receive an additional 10% impairment (of the lower extremity) for the torn meniscus we would note that the definition of impairment requires the condition to be permanent and once the meniscus has been replaced that impairment no longer exists. Further, there is no medical evidence that the torn meniscus should be included in the final IR because even Dr. H did not include it in his IR.

The Appeals Panel has, on occasion, stated the designated doctor occupies a "unique position" under the 1989 Act (Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992); that no other doctor's report is accorded this special presumptive status (Texas Workers' Compensation Commission Appeal No.

92366, decided September 10, 1992); that lay testimony or evidence does not provide a sufficient basis to overcome the presumptive weight accorded the designated doctor's report (Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992). Lay argument, such as claimant presents here, does not constitute such medical evidence necessary to overcome the presumptive weight of the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92312, decided August 19, 1992. The Appeals Panel has also held that a "great weight" determination amounts to more than a mere balancing or preponderance of the medical evidence (Appeal No. 92412, *supra*); 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); and that a designated doctor's report should not be rejected "absent a substantial basis to do so (Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993). We see no reason for deviating from those established positions in the instant case and find that the hearing officer's determination that the great weight of other medical evidence was not contrary to the designated doctor's report to be supported by sufficient evidence.

Whether the abnormal motion with 120E of retained flexion for 11% impairment as assigned by Dr. H overcomes the designated doctor's assertion that no additional assessment for loss of motion is to be added to the 20% impairment for the knee replacement arthroplasty, is an issue to be resolved by the fact finder. In Table 36 we note that most of the disorders (six of ten) are followed by the notation (under the impairment of lower extremity column) "combined with impairment for loss of motion" followed by the double asterisk (for the patellectomy) telling the reader that combining any impairment in Table 36 with impairment for loss of motion is to be done using the Combined Values Chart. However, item 3, knee replacement arthroplasty, does not have a provision for combining that impairment for loss of motion. It appears to be Dr. P's interpretation that when there is a complete knee replacement arthroplasty no additional impairment for loss of motion is to be considered. We find that Dr. P's interpretation of Table 36 has not been overcome by the great weight of other medical evidence.

Claimant's argument that she should also receive an impairment for the degenerative arthritis was addressed by the hearing officer when he noted "the artificial knee did not have arthritis." In that the knee replacement removed the arthritis of the old joint, under the definition of impairment, cited previously, there is no impairment for arthritis as it no longer exists. We find the hearing officer's determination to be supported by sufficient evidence.

Having reviewed the record including all of the medical records we find sufficient evidence to support the hearing officer's factual determinations. In considering all the evidence in the record, we find that the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Finding there is sufficient evidence to support the determinations of the hearing

officer and applying the cited standard of appellate review, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge