APPEAL NUMBER 94976
FILED SEPTEMBER 1, 1994

On June 30, 1994, a contested case hearing was held in (City), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). The issues at the hearing were maximum medical improvement (MMI) and impairment rating (IR). The hearing officer decided that the appellant (claimant) reached MMI on November 30, 1993, with a zero percent IR as reported by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant disagrees with the decision and requests that we remand the case to the hearing officer. The respondent (carrier) requests affirmance.

DECISION

Affirmed.

On _____, the claimant was working as a therapist in the employer's psychiatric center when she injured her neck restraining a patient who had become physically violent. She was taken to a hospital emergency room and was then treated by Dr. B, a chiropractor, who diagnosed a cervical sprain, a thoracic sprain, and hyperflexion/hyperextension. She then began treatment with Dr. F, a chiropractor, in November 1992. Dr. F gave the same diagnoses as Dr. B. According to Dr. F, the claimant has treated with him on about 212 occasions since the initial visit.

A CT scan of the cervical spine done in November 1992 revealed a bulging disc at the C5-6 level. However, an MRI scan of the cervical spine done in December 1992 was reported as normal. A CT scan and a cervical myelogram done in January 1993 were also reported as normal.

Dr. F referred the claimant to Dr. S who reported in August 1993 that the claimant was "approaching MMI." The claimant said that Dr. SA performed an independent medical examination on November 30, 1993. In a Report of Medical Evaluation (TWCC-69) dated November 30, 1993, Dr. SA reported that the claimant reached MMI on November 30, 1993, with a zero percent IR. In a three-page narrative report, Dr. SA reported his findings on physical examination of the claimant and stated that range of motion (ROM) measurements of the cervical spine were invalid.

In an undated TWCC-69, Dr. F, the treating doctor, reported that the claimant reached MMI on January 14, 1994, with a 20% IR. In a subsequent TWCC-69, Dr. F reported that the claimant reached MMI on June 8, 1994, with a 20% IR. At the hearing, Dr. F testified that he felt the claimant had reached MMI in January 1994, and further testified that the 20% IR consisted of 15% impairment for loss of cervical ROM and five percent impairment for a soft tissue injury to the cervical spine.

The Commission selected Dr. T as the designated doctor. He examined the claimant on February 22, 1994, and reported in a TWCC-69 dated February 22, 1994, that the claimant reached MMI on November 30, 1993, with a zero percent IR. In a six-page narrative report, Dr. T reported his findings on physical examination, reviewed medical reports and diagnostic test results, noted the claimant's history of medical treatment for her injury, and noted the use of an inclinometer to measure ROM. After ROM testing, Dr. T concluded that cervical ROM was invalid and was inconsistent with objective findings.

Dr. F, the treating doctor, testified that he had not witnessed the examinations given the claimant by Dr. SA and Dr. T, but based on their respective reports, he opined that Dr. SA's examination was "rudimentary" and Dr. T's examination was "fraudulent." He acknowledged that Dr. T, the designated doctor, is a board certified orthopedic surgeon.

The hearing officer found that the great weight of the other medical evidence was not contrary to Dr. T's determinations of MMI and IR, and concluded that the claimant reached MMI on November 30, 1993, with a zero percent IR as reported by Dr. T.

When the Commission selects a doctor as a designated doctor to determine MMI and IR, the report of the designated doctor has presumptive weight and the Commission must base its determinations of MMI and IR on the designated doctor's report, unless the great weight of the other medical evidence is to the contrary. Sections 408.122(b) and 408.125(e). No other doctor's report, including that of a treating doctor, is entitled to presumptive weight. To overcome the presumptive weight accorded to the report of the designated doctor requires more than a preponderance of the evidence; it requires the "great weight" of the other medical evidence to be contrary to the report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992.

In the instant case both Dr. T, the designated doctor, and Dr. SA determined that the claimant reached MMI on November 30, 1993, with a zero percent IR. Only Dr. F, the treating doctor, disagrees with the November 30, 1993, date of MMI and the zero percent IR. Having reviewed the record, we conclude that the hearing officer did not err in finding that the great weight of the other medical evidence was not contrary to the report of the designated doctor, and in concluding that the claimant reached MMI on November 30, 1993, with a zero percent IR.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge