APPEAL NO. 950047
FILED FEBRUARY 21, 1995

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing was held on December 19, 1994. The hearing officer determined that the appellant (claimant) reached maximum medical Improvement (MMI) on June 11, 1993, with an impairment rating (IR) of 13% as certified by a Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appeals urging he has had continuous pain and that his IR should be five percent more as the great weight of medical evidence is contrary to the designated doctor's report. No response has been filed.

DECISION

The decision and order are affirmed.

The claimant, a bus driver, sustained a back, neck and shoulder injury when he fell down some steps of his bus on _____. His medical records show extensive, non-surgical treatment with a number of doctors and health care providers. The claimant testified that he has had and continues to have pain in his arms, and legs and has muscle spasms. There are a variety of conflicting opinions in the medical evidence and there are differing views on MMI and IR. In an April 1993 report by one of claimant's treating doctors, (Dr. F), an IR of 18% is assessed but the report also states the estimated date of MMI is "when patient completes a pain program with compliance and motivation." In an April 14, 1993, report from another doctor seen by the claimant, (Dr. W), it is stated that MMI has been reached with a 4% IR. A Commission-selected designated doctor, (Dr. Mac), rendered a Report of Medical Evaluation (TWCC-69) following an examination on December 12, 1993, certifying MMI as June 6, 1993, with a 13% IR. Claimant's current treating doctor, (Dr. M), disagreed with the Dr. Mac's report and his use of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), and opined that the IR would be 17%. A benefit review officer wrote to Dr. Mac asking for clarification of his use of the AMA Guides and Dr. Mac responded explaining his reasoning and adhering to his rating.

Clearly, there was some degree of conflict in the various medical reports; however, this is for the hearing officer to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence (Section 410.165(a)), she concluded that the designated doctor's report should be accorded presumptive weight under Section 408.125(e) and that the great weight of the other medical evidence was not to the contrary. We have emphasized the unique position occupied by the designated doctor under the 1989 Act and that a mere

balancing of the evidence will not overcome the presumptive weight accorded his report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Texas Workers' Compensation Commission Appeal No. 94445, decided May 23 1994. The claimant also testified that he continues to experience pain which is certainly unfortunate; however, MMI will not in every case mean that pain free recovery has occurred or that a claimant can return to his or her previous occupation. Texas Workers' Compensation Commission Appeal No. 92312, decided August 19. 1992; Texas Workers' Compensation Commission Appeal No. 93007, decided February 18, 1993.

Our review of the evidence in this case leads us to conclude there was sufficient evidence in support of the hearing officer's findings and conclusions and we agree that the presumptive weight accorded the designated doctor's report was not contrary to the great weight of the other medical evidence. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge