APPEAL NO. 950093
FILED FEBRUARY 28, 1995

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On November 4, 1994, a hearing was held. The hearing officer determined that appellant (claimant) reached maximum medical improvement (MMI) on August 26, 1993, with one percent impairment rating (IR). She also found that claimant had disability from July 3, 1993, through August 26, 1993, and that respondent (employer) is entitled to reduce all impairment for an earlier compensable injury. Claimant asserts that she is not at MMI and should not have been sent to a designated doctor. (employer) replies that the decision of the hearing officer should be upheld.

DECISION

We affirm.

Claimant drives a bus for (employer). The compensable injury in question occurred on _____, when she was trying to open a window. On May 6, 1992, she had injured her ankle, neck, and shoulder when a seat in a bus caused her to "bottom out." (Dr. C) had seen claimant as a designated doctor; he noted that he evaluated claimant for an injury in 1992, but since he saw her on August 26, 1993, and her new injury was on _____, the IR would cover both. He stated he could not "dissect out" the IR for each. He found MMI at August 26, 1993, with four percent IR. Claimant's doctor, (Dr. Z), at first agreed with Dr. C's IR, while stating that MMI should be at October 15, 1993. He later changed to say that MMI and IR should only be for the 1992 injury.

Claimant was sent to (Dr. P) for an "independent medical examination" on November 9, 1993. He noted having seen her before in 1986 and 1992. He found MMI on August 26, 1993, with a one percent IR, for the shoulder. (Dr. R) was then appointed as the designated doctor. He saw claimant on January 25, 1994, and prepared a Report of Medical Examination, TWCC-69, in which he found MMI at January 24, 1994, with a one percent IR. The benefit review officer wrote to Dr. R on March 30, 1994, asking him about the date of MMI; Dr. R replied to the effect that MMI took place on August 26, 1993.

The evidence by the above physicians that MMI has been reached with a one percent IR, or that IR cannot be separated from the total of four percent given for this injury and the preceding injury, is disputed by a note from Dr. Z that says claimant has pain and needs physical therapy.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She could consider that three physicians, including the designated doctor, believe that claimant has reached MMI and that even claimant's doctor, Dr. Z,

appeared to believe so for a period of time. When not determined by passage of time, MMI is to be determined on the basis of reasonable medical probability (*see* Section 401.011(30)); claimant's opinion as to MMI provided no basis for contradicting the medical opinions that MMI had been reached. With the designated doctor entitled to presumptive weight as to MMI and IR, as set forth by Sections 408.122 and 408.125, the evidence was sufficient to find that the great weight of other medical evidence was not contrary to the designated doctor's opinion. There was no evidence that claimant's referral to a designated doctor was not in accordance with the applicable provisions of the 1989 Act.

Finding that the decision and order are sufficiently supported by the evidence, we affirm.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge