APPEAL NO. 990473

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 12, 1999. The issues at the hearing were whether the appellant (claimant) reached maximum medical improvement (MMI), and if so, on what date, and what is the claimant's impairment rating (IR). The hearing officer concluded that the certification of the designated doctor is entitled to presumptive weight, that the great weight of the medical evidence is not contrary to the report of the designated doctor, and that the claimant reached MMI on October 16, 1997, with a zero percent IR. The claimant appeals, urging that the great weight of the other medical evidence is to the contrary of the designated doctor's report; that she has not reached MMI; and that she therefore has no IR. The respondent (carrier) did not respond on appeal.

DECISION

Affirmed.

The claimant contends that the hearing officer erred in adopting the certification of MMI and IR of the designated doctor, Dr. C. The claimant testified that she slipped and injured her lower back on _____, while working as a service coordinator for the employer. The claimant sought medical treatment with Dr. CH on July 10, 1997. Dr. CH diagnosed the claimant has having acute lumbosacral muscle spasm with dorsal nerve root compression. Dr. CH referred the claimant to Dr. L. Dr. L evaluated the claimant on August 28, 1997, and diagnosed lumbar strain with possible radiculopathy. The claimant felt she was not receiving proper medical treatment and she changed treating doctors to Dr. B in November 1997.

The carrier had the claimant examined by Dr. H on October 31, 1997. Dr. H certified that the claimant reached MMI on October 13, 1997 with a zero percent IR. The claimant disputed Dr. H's certification and the Texas Workers' Compensation Commission (Commission) appointed Dr. C as the designated doctor. Dr. C examined the claimant on February 16, 1998, and certified the claimant at MMI on October 16, 1997 with a zero percent IR. Dr. C diagnosed the claimant has having lumbalgia and right leg neuralgia. Dr. C indicated that the MRI of the lumbar spine in July 1997 was negative for herniated disc and neurologic impingement.

On April 8, 1998, Dr. B referred the claimant to Dr. LH for treatment. Dr. LH indicated that the claimant had degenerative disc disease of the lumbosacral spine, herniated nucleus pulposus L4-5, and mild to moderate lumbar spinal stenosis of the lumbosacral spine. Dr. LH concluded that the claimant had not reached MMI because she had not undergone appropriate medical treatment. Additionally, Dr. B indicated in a letter dated May 8, 1998, that according to her note of March 2, 1998, the claimant had not reached MMI. The claimant subsequently received medical treatment from Dr. V and Dr. O. A second MRI was performed in July 1998. According to Dr. LH, this second MRI

showed degenerative changes at the L4-5 and L5-S1 levels as well as a herniated nucleus pulposus at the L4-5 level and T2 weight imaging in the sagittal plane revealed an annular tear off to the left side of midline of the L4-5 level with a high intensity zone in the annulus.

The claimant's appeal states that the designated doctor should have "reconsidered" additional information from Drs. LH, V and O and references Dr. C's report which states "If additional information is available at a later date, a reconsideration may be requested although it may or may not change the opinions that have been rendered in this evaluation." The narrative attached to the Report of Medical Evaluation (TWCC-69) signed by Dr. C indicates that he reviewed the claimant's medical records available at the time. There is no indication in the record that the claimant asked the Commission to seek clarification or to have the designated doctor review additional medical records prior to or at the CCH. If the claimant thought clarification was warranted, a request should have been made prior to the CCH. Texas Workers' Compensation Commission Appeal No. 960352, decided April 8, 1996. The report of a designated doctor does not have presumptive weight concerning extent of injury (*see* Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995), but whether or not to assign an IR for an injury or condition represents a medical difference of opinion. Texas Workers' Compensation Commission Appeal No. 951921, decided December 11, 1995. Dr. LH, subsequent to Dr. C's examination and prior to the claimant's second MRI, concluded that the claimant's degenerative disc disease was a part of the compensable injury and also diagnosed a herniated nucleus pulposus at L4-5, a finding not shared by other doctors. Dr. LH's diagnosis after the second MRI remained the same, but includes an annular tear. Dr. LH's basis for determining the claimant is not at MMI is based on his belief that the claimant has not undergone appropriate medical care. Dr. V recommended a treatment plan, but did not render an opinion as to MMI. Dr. O concurred with Dr. LH's evaluation and recommendations. Whether a claimant has undergone appropriate medical care is a matter of opinion. Simply because a person has reached MMI does not mean that an employee will not require further medical treatment. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.021(a).

MMI is the point at which further material recovery or lasting improvement can no longer be anticipated, according to reasonable medical probability. Section 401.011(30)(A). A person can be at MMI, yet still continue to suffer symptoms and pain from the injury, if based on medical judgment there will likely be no further material recovery from the injury. Section 408.122(c) provides that the report of the designated doctor has presumptive weight which can be overcome only if the great weight of the other medical evidence is to the contrary. In this case the hearing officer considered all of the medical evidence presented and did not find that the other medical evidence rose to the level of great weight against the certification of MMI and impairment assigned by Dr. C. The hearing officer determined that the report of the designated doctor is entitled to presumptive weight, that the great weight of the medical evidence is not contrary to the report of the designated doctor, and that the claimant reached MMI on October 16, 1997, with a zero percent IR. These determinations of the hearing officer are not so against the great weight and

preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The claimant also attached a number of documents to her appeal, some of which were in evidence and some of which were not offered at the hearing, but which are dated prior to the hearing. Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. Consequently, those documents which are attached to the appeal, but which are not in evidence, will not be considered on appeal. *See* Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992. We observe that those documents attached to the appeal which were not offered at the hearing do not meet the criteria for newly discovered evidence. Appeal No. 92400.

We affirm the decision and order of the hearing officer.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge