APPEAL NO. 990602

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 March 4, 1999. The issues at the CCH were the appellant's (claimant) maximum medical improvement (MMI) date and the claimant's impairment rating (IR). The hearing officer determined that the great weight of the other medical evidence is not contrary to the report of the designated doctor, and that the claimant reached MMI on May 4, 1996, with a 12% IR. The claimant appeals, urging that the decision of the hearing officer be reversed and requests the appointment of a new doctor for a valid rating. The respondent (carrier) responds that it is unable to discern what specific issues the claimant is presenting, and asserts that the hearing officer's decision is correct and should be affirmed.

DECISION

Affirmed.

The claimant testified that he injured his low back on _____, when he lifted a box while performing his job duties as a laborer. The medical records indicate that the claimant received medical treatment from Dr. CH and an MRI was performed on October 20, 1994. In December 1994, Dr. CH recommended epidural steroid injections, but the claimant did not want the recommended treatment, and Dr. CH recommended that the claimant find another doctor. In March 1995, the claimant received medical treatment from Dr. CA, who indicated the claimant was not a surgical candidate, and was not at MMI. The claimant received medical treatment from Dr. M, a chiropractor, from June 6, 1995, through August 1995.

The claimant moved to (State 1) and received medical treatment from Dr. F. Dr. F's report dated September 27, 1995, indicates that the claimant was hesitant to have any surgery and did not want to have surgery if possible at that time. In January 1996, the claimant sought medical treatment with Dr. W. Dr. W's impression was multilevel lumbar disc disorder with degeneration and disc herniation at the L4-5 level and L2-3 level, and left leg radiculitis. Dr. W certified claimant at MMI on January 26, 1996, with a 20% IR based on the Guides to the Evaluation of Permanent Impairment, fourth edition. Dr. W states in his narrative report, "he does have a surgically treatable back, but given his multilevel involvement, his prognosis is not very good. Therefore, I do not recommend surgical treatment. On the other hand, he is very much opposed to surgical treatment of any kind."

On May 4, 1996, the claimant was examined by Dr. B, a Texas Workers' Compensation Commission (Commission)-appointed designated doctor, in (State 1). Dr. B certified the claimant reached MMI on May 4, 1996, with a 12% IR. Dr. B states in his narrative report:

> A diagnosis of a herniated nucleus pulposus was given, and he was apparently given valid offer of surgery at least one time which he refuses and intends to refuse. I think it is within any person's right to refuse spine surgery; however, this is obviously coming from his paranoia rather than any specific reason.

The claimant testified that he was incarcerated in Texas from June 6, 1996, through February 10, 1998. On February 21, 1998, the claimant went to the emergency room for back pain. The claimant received medical treatment from Dr. P in March 1998 and another lumbar MRI was performed. On September 14, 1998, the claimant had a lumbar laminectomy at L4-5 and L5-S1, foraminectomy of L4-5, L5-S1, and spinal fusion of L4-S1 with instrumentation.

The claimant urges in his appeal that the Commission should appoint a new doctor for a valid rating. We have strictly limited the circumstances in which that step may be appropriate. We have indicated that a second designated doctor may be appointed where a previously selected designated doctor is unable or refuses to resolve the medical dispute consistent with the 1989 Act. Texas Workers' Compensation Commission Appeal No. 93906, decided November 19, 1993. We have stressed that dissatisfaction with the first doctor's report is not grounds for appointing a second designated doctor. Texas Workers' Compensation Commission Appeal No. 941729, decided February 10, 1995.

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 that 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.

The hearing officer determined that the great weight of the medical evidence was not contrary to the report of the designated doctor, and the claimant reached MMI on May 4, 1996, with a 12% IR. The report of the designated doctor indicates that he used the proper Guides to the Evaluation of Permanent Impairment and properly applied them. While the hearing officer did not make a specific finding that the designated doctor's report was given presumptive weight, we can infer that the hearing officer found that the report of Dr. B is valid and is entitled to presumptive weight. These determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (Tex. 1951).

The hearing officer's decision and order contains the following findings of fact:

FINDINGS OF FACT

1. The parties stipulated to the following facts:

   A. On December 29, 1994, the Claimant was the employee of Employer.

   B. On December 29, 1994, Employer had workers' compensation insurance with Texas Workers' Compensation Insurance Fund, Carrier.

   * * * *

   D. Claimant's statutory [MMI] [date] is October 7, 1996.

   E. On May 4, 1996, [Dr. B], the designated doctor, certified Claimant to be at [MMI] on May 4, 1996 with a twelve percent [IR].

The claimant appealed findings of fact 1.A, 1.D and 1.E. Hearing officers may take stipulations from the parties to expedite the proceedings. Rule 142.8(a)(5). "A written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding." Section 410.166. Our review of the audiocassette tape recording of the CCH reveals that the parties entered into the oral stipulations reflected verbatim in the decision with the exception that the date in 1.A and 1.B should have reflected the date of injury, _____. We dismiss the claimant's argument regarding the three stipulations and modify Findings of Fact Nos. 1.A and 1.B to reflect _____.

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge