APPEAL NO. 990878

This appeal is brought 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 31, 1999. He (hearing officer) determined that Dr. AC, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, certified that the appellant (claimant) reached maximum medical improvement (MMI) on April 16, 1998, with a five percent impairment rating (IR); that the great weight of the other medical evidence is not contrary to that certification of Dr. AC; and that the claimant reached MMI on April 16, 1998, with a five percent IR. The claimant appealed; provided a lengthy statement of the history of her claim; stated that she believed that all of the enclosures to a report from Dr. H, her treating doctor, were not offered into evidence at the benefit review conference (BRC)[1]; complained that the respondent (carrier) has refused to authorize two prescriptions written by her treating doctor; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The carrier replied, urged that the determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, and requested that his decision be affirmed.

DECISION

We affirm.

Section 410.203(a) provides that the Appeals Panel shall consider the record developed at the CCH and the request for review and the response to the request for review. As a general rule, the Appeals Panel does not consider evidence not offered into evidence at the CCH and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. We will limit our review to the evidence offered and admitted at the CCH.

At the CCH and in her request for review, the claimant stated that the carrier did not authorize her to have two prescriptions filled. The hearing officer properly advised her that he did not have jurisdiction to resolve the dispute concerning the prescriptions and that she could exercise her right to have that dispute resolved by the Commission's Medical Review Division. We encourage the claimant to speak with the ombudsman about the medical dispute concerning the filling of the prescriptions.

Dr. RC examined the claimant at the request of the carrier; in a letter dated January 28, 1998, stated that because of recent surgery performed three weeks earlier she had not reached MMI; and in a Report of Medical Evaluation (TWCC-69) with the same date stated that he anticipated that she would reach MMI on June 28, 1998. Dr. W also examined the claimant at the request of the carrier and in a TWCC-69 dated June 17, 1998, certified that

[1]We will treat this as a statement concerning the CCH and not the BRC.

the claimant reached MMI on that day with a 14% IR based on impairment of the left upper extremity. In a report dated August 19, 1998, Dr. AC certified that the claimant reached MMI on April 16, 1998, with a one percent IR based on impairment of the left upper extremity. In a letter to the Commission dated August 21, 1998, Dr. H stated that he disagreed with the report of Dr. AC, pointing out that the claimant had bilateral trigger thumbs, that the right upper extremity had not been rated, and that she had reflex sympathetic dystrophy (RSD). In a medical report dated August 28, 1998, Dr. H stated that the claimant needed surgery on the right side. In a letter to the Commission dated September 8, 1998, Dr. H said that he did not agree that the claimant was at MMI because if she returned to work she would redevelop symptoms in the right upper extremity; that the right side had been ignored and should be evaluated; that she needs surgery on the right side; and that he has not released the claimant to return to work and her major restrictions are to avoid repetitive motion. A Commission employee wrote to Dr. AC on September 25, 1998; provided him reports from Dr. H dated August 28 and September 8, 1998; and asked if it was appropriate for him to reconsider his certification of MMI and IR. In a letter dated September 30, 1998, Dr. AC said that if the right wrist and thumb are part of the compensable injury, he would be happy to amend his report to indicate a five percent IR. In a letter to the Commission dated November 10, 1998, Dr. H stated that he cannot believe that Dr. AC had all of the medical records or read all of them; that Dr. AC has reported that the claimant is at MMI when the right side has not been treated; that the carrier has denied treatment that he and another doctor have recommended; that the claimant does have RSD; and that it has never entered his mind that the claimant is anywhere near MMI. A Commission benefit review officer (BRO) wrote to Dr. AC on December 18, 1998; stated that a BRC had been held, that the claimant's compensable injury does include bilateral carpal tunnel syndrome (CTS), and that the claimant has had surgery on the left wrist and will have surgery on the right wrist as soon as her left wrist is asymptomatic; asked if the information would have any effect on his previous certification that the claimant reached MMI on April 16, 1998, with a five percent IR; and requested that he provide reasons to support his position. In a letter to the BRO dated December 29, 1998, Dr. AC said that he had reviewed all of the correspondence and medical records he had received; that he did not feel that the compensable bilateral CTS injuries and treatment schedule would change his previous certification; that additional surgery does not necessarily mean that MMI was not reached at an earlier date if that surgery will not result in further material recovery; that there are no objective findings supporting the diagnosis of RSD; that nerve conduction studies completed on October 30, 1997, and April 16, 1998, failed to show evidence of CTS to either of the upper extremities; and that he does not feel that a second operative procedure is indicated and added that it is likely to result in continued subjective pain symptoms. In a letter to the ombudsman assisting the claimant dated January 28, 1999, Dr. H stated that he totally disagreed with Dr. AC, opined that Dr. AC is not knowledgeable about CTS, gave his reasons for disagreeing with Dr. AC concerning the diagnosis of bilateral CTS and RSD, and indicated that it takes six months to recover from hand surgery.

The 1989 Act sets forth a mechanism to help resolve conflicts concerning MMI and IR by according presumptive weight to the report of a doctor referred to as the designated

doctor. Texas Workers' Compensation Commission Appeal No. 92495, decided October 28, 1992. If the Commission selects the designated doctor, as was done in this case, the Commission shall base its determination of whether the claimant has reached MMI and the claimant's IR on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. Sections 408.122(c) and 408.125(e). We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. No other doctor's report is accorded the special presumptive status given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. The hearing officer resolves conflicts in expert evidence and assesses the weight to be given to expert evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer determined that the designated doctor certified that the claimant reached MMI on April 16, 1998, with a five percent IR and that the great weight of the other medical evidence is not contrary to the report of the designated doctor. From those determinations, it can be inferred that the hearing officer determined that the report of the designated doctor is entitled to presumptive weight. The determinations of the hearing officer, including the inferred determination, 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Dorian E. Ramirez
Appeals Judge