APPEAL NO. 991056

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 15, 1999. She determined that the appellant (claimant) reached maximum medical improvement (MMI) on December 26, 1996, with an impairment rating (IR) of five percent, as certified in the second report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor, Dr. G. Claimant appeals, contending that the hearing officer erred in according presumptive weight to the designated doctor's report. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in according presumptive weight to the designated doctor's second report. Claimant asserts that he is not at MMI; that his treating doctor, Dr. J, stated that he was not at MMI; and that the designated doctor should not have relied on another doctor's report to determine when claimant reached MMI.

"Maximum medical improvement" is defined, as pertinent to this case, as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 401.011(30)(A). The presence of pain is not, in and of itself, an indication that an employee has not reached MMI. A person who is assessed to have lasting impairment may indeed continue to experience pain as a result of an injury. Texas Workers' Compensation Commission Appeal No. 93007, decided February 18, 1993. The fact that an employee still requires treatment for an injury does not mean that he or she is not at MMI. Texas Workers' Compensation Commission Appeal No. 94045, decided February 17, 1994.

The report of a Commission-selected designated doctor is given presumptive weight with regard to MMI status and IR. Sections 408.122(b) and 408.125(e). The amount of evidence needed to overcome the presumption is the "great weight" of the other medical evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that he had worked for (employer) for about nine years when he sustained his compensable injury on _____. Claimant said he slipped on wet grass and fell, landing on his back. He testified that he first went to the company doctor, who placed him on light-duty status until he was laid off two months later. Claimant said he has been in pain since his injury, that his legs give way, and that he has difficulty walking. He said he has chosen not to have surgery until he has completed other types of treatment.

The designated doctor first certified on February 23, 1998, that claimant reached MMI on December 26, 1996, with an IR of zero percent. He indicated in the accompanying report that he had not received diagnostic testing to review. In an amended report, the designated doctor certified on November 30, 1998, that claimant reached MMI on the same date with an IR of five percent. The five percent was awarded under Table 49 II(B) of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) for an unoperated lumbar disc lesion with six months of medically documented pain. In a December 2, 1998, letter, the designated doctor stated that he had received and reviewed a CT scan and myelogram and a November 1997 MRI scan. He stated that he reviewed them with Dr. GE, a "neuro-radiologist," and that claimant had a disc bulge at L4-5 with no evidence of herniation.

The designated doctor referred to the report of Dr. A, and stated that he believed claimant reached MMI as of the date of Dr. A's evaluation on December 16, 1996.[1] Claimant stated that he remembered seeing Dr. A, but Dr. A's report is not contained in the record. Because of this, we are unable to tell whether Dr. A reviewed all of the films when he saw claimant in 1996. The designated doctor noted that Dr. A found that claimant's motor examination, reflexes and sensation were normal. The designated doctor stated that he had received and reviewed claimant's January 1997 CT scan and myelogram as well as the November 26, 1997, MRI scan that was performed in (Country). The fact that claimant still has pain and feels that he needs treatment does not mean that he is not at MMI. Appeal No. 94045, *supra.* After reviewing the evidence, we conclude that the hearing officer's MMI determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. We would note that it was not inappropriate for the designated doctor to review other doctors' reports in determining the date of MMI.

Claimant asserts that the hearing officer erred in determining that his IR is five percent. Claimant contends that the hearing officer did not consider and discuss all the evidence. There is nothing in the record to suggest that the hearing officer did not consider all the evidence in this case. The hearing officer was not required to set forth all the evidence and was required only to make findings of fact and conclusions of law. Claimant complains that the medical reports of Dr. A "are not the same." However, Dr. A's reports are not contained in the record for our review in this regard. Claimant contends that other doctors opined that claimant had a herniated disc and not merely a bulge as found by the designated doctor. However, presumptive weight is given to the designated doctor's opinion regarding whether claimant had

[1]We note that Dr. A is also referred to in the record as "Dr. O."

a herniated disc. The fact that other doctors diagnosed a herniation based on the same diagnostic tests constitutes a mere difference in medical judgment. Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996.

The hearing officer determined that the findings of the designated doctor are not contrary to the great weight of the other medical evidence. The fact that claimant's treating doctor stated that claimant should have a different IR does not mean that the great weight of the other medical evidence is contrary to the designated doctor's report. After considering the medical evidence and the reports of the designated doctor, we hold that the hearing officer's IR determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Alan C. Ernst
Appeals Judge