APPEAL NO. 991667

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. On July 13, 1999, a hearing was held. He (hearing officer) determined that appellant (claimant) reached maximum medical improvement (MMI) from a _____, injury, on July 30, 1993, with a 10% impairment rating (IR). Claimant asserts that Dr. B, the designated doctor, did not rate all the compensable injury, that Dr. B did not certify on November 10, 1998, that MMI was reached on July 30, 1993, with a 10% IR, and that Dr. B's report of November 10, 1998, was contrary to the great weight and preponderance of the evidence. Respondent (carrier) replied that the decision should be affirmed. Claimant replied to the response by saying it was an attempt to mislead the Appeals Panel.

DECISION

We affirm.

Claimant worked for (employer). He testified that on _____, he struck his head on a pipe while at work, causing him to fall onto his buttocks. According to the first record of medical care provided at the hearing, dated February 8, 1993, claimant said he was injured at work on January 15, 1993, and sometime thereafter was laid off; the report added that it was not until two weeks after the fall that claimant began having back pain. Another medical record of March 12, 1993, shows that claimant had at least two prior back injuries, plus it also said claimant has "a long history of chronic back pain and paresthesias . . . attributed to fibromyalgia and/or a chronic pain syndrome." Another exhibit submitted by claimant is Texas Workers' Compensation Commission Appeal No. 93512, decided August 2, 1993, which affirmed a hearing officer's determination, over carrier's appeal, that a "compensable injury" did occur on _____.

While claimant recites many statements from physicians, no physician's statement is cited, and there is none in the record under review, which says that the IR for the compensable injury should be something more than the 10% assigned by the designated doctor in 1998, almost six years after the incident of _____.

Claimant disputed the date of MMI (said by the designated doctor to be July 30, 1993), pointing out that his treating doctor at the time, Dr. P, while originally having certified MMI to be on July 30, 1993, later changed the MMI date to July 5, 1994. There is no other MMI date provided by a physician in the record under review.

Dr. B's first report as designated doctor was provided in April 1994; in that report Dr. B specifically did not provide any IR for claimant's avascular necrosis of the left hip, but did provide a total of five percent IR, all for the low back. Thereafter, in June 1994, Dr. B replied to questions from the Texas Workers' Compensation Commission (Commission) by saying that the IR remained five percent. He also answered a question as to why he said MMI was reached on July 30, 1993, by saying that Dr. P had provided that date of MMI,

and added, "there appears to be no appreciable change in the patient's overall condition since that time." He still stated in his reply that claimant's avacular necrosis, based on a bone scan, appeared to be "long standing and could not have been related to the work incident of _____." He agreed that claimant did have core decompression surgery in regard to the avascular necrosis on April 16, 1993, but restated that the record did not show the avascular necrosis was traumatically induced on _____.

Dr. P, who performed the hip surgery on claimant in April 1993, noted prior to that surgery that the cause of the avascular necrosis was unknown. Then on November 18, 1993, Dr. P found that claimant had reached MMI on July 30, 1993, with a four percent IR. On July 21, 1994, when claimant returned complaining of increased low back pain after coughing, Dr. P provided another Report of Medical Evaluation (TWCC-69) which said that MMI was reached on July 5, 1994, with a zero percent IR. Dr. P then ordered an MRI of the low back a week later on July 28, 1994. It was referred to in August 1994 as showing no abnormality, and on September 1, 1994, Dr. P "dismissed" claimant.

Two weeks after the April 1993 hip surgery, claimant had noted dizziness and vertigo. In May 1993 Dr. L referred to the vertigo as "benign" and said that no treatment was needed. In August 1993 claimant reported that his ribs were painful after vomiting, which he attributed to Motrin. (No prior medical records in evidence show that claimant had been prescribed Motrin for the compensable injury of _____.)

In October 1994, Dr. A, who had been treating claimant also, opined that he thought the 1992 fall was "the precipitating factor for your hip problem."

Then, on July 10, 1995, claimant tripped over a bucket at home and fell. The record under review then provides no medical records during 1996 and 1997 relative to the injury of _____.

Apparently, claimant was then in a motor vehicle accident, because Dr. W six-page neurological report dated April 27, 1998, stated that claimant's vehicle had been struck from the rear and claimant taken to an emergency room on March 16, 1998. Dr. W states claimant had neck pain from that accident and "bilateral occipital pain . . . headaches . . . on top of his head . . . [with] constant pressure feeling throughout his head," adding that in the "last 10 days" he felt "dizzy." Dr. W said that claimant denied prior headaches or dizziness, but Dr. W noted claimant's prior reports of dizziness and vertigo (after surgery in 1993). Dr. W said that he did not believe there was any serious neurologic problem but ordered an MRI of the head.

The MRI of the brain was dated May 1, 1998. It showed "scattered signals of focal increased signal in the frontal lobe in the deep white matter . . . a nonspecific finding. Chronic ischemic change or possibly prior inflammatory change could have this appearance." On May 30, 1998, (Dr. S) thought the etiology of the dizziness was unknown. In August 1998, Dr. W replied to a letter from claimant and said:

While it is possible that a component of your dizziness might be posttraumatic in origin, it is just as likely that the previous trauma bears no causal relation to your dizziness. I do not feel that there is any correlation between your dizziness and the non-specific changes seen in the frontal white matter bilaterally on your MRI scan of the brain.

In October 1998, the Commission chose to direct claimant to see the designated doctor again in November 1998 "for the purpose of" including an impairment for the "left hip . . . ribs, and headaches/dizziness."

On November 10, 1998, Dr. B provided a report which said that he believed claimant "has long reached MMI." He noted the five percent IR previously given for the back and added five percent for avascular necrosis although he said, "although it has been asserted, the clinical criteria did not support such an assertion in a probative fashion. It is my assumption this has been administratively determined that the avascular necrosis is related to the incident of _____." He then observed that there was no "organic basis for the . . . complaints of dizziness and headache." He provided no IR for the headaches and dizziness; the ribs were not rated.

On November 30, 1998, Dr. A (who had said in 1994 that avascular necrosis had been precipitated by the 1992 fall) said in a letter to claimant that Dr. B's IR "looks to be appropriate in my opinion." Then, in March 1999, Dr. A again wrote to claimant and told him that he had had the "definitive treatment" for avascular necrosis–the core decompression. He added:

> Multiple follow up films years later have not shown any further changes and no collapse. After this period of time, changes would have been noted on the plain films, so I do not think any further advanced imaging is needed . . . .

Dr. A also said in that letter that he agreed with Dr. W and that it could not be stated definitely that the injury had a role in regard to the dizziness.

Dr. Br also wrote to claimant in March 1999 and discussed childhood avascular necrosis and offered no criticism of the MMI date or the IR.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. MMI and IR were the only issues determined at this hearing. With a designated doctor, Dr. B, providing multiple reports (in response to repeated questions or direction from the Commission), Sections 408.122 and 408.125 apply and provide that the designated doctor's report will have "presumptive weight, and the commission shall base [its determination of MMI/IR] on that report unless the great weight of the other medical evidence is to the contrary."

While the Commission told Dr. B to rate various conditions in 1998, Dr. B had to provide an IR greater than zero percent only for those injuries the Commission named upon which "objective clinical or laboratory finding exists." (*See* Section 408.122.) As a result, he provided a zero percent IR for both headaches/dizziness and "ribs." As stated, there

was no other physician's opinion providing an IR in an amount greater than the 10% found to be appropriate by the hearing officer. In addition, the medical records and various reports of the designated doctor provide sufficient evidence to support the determination that the designated doctor rated the entire compensable injury. While claimant cites the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association for the statement that MMI is reached when stability is reached, the 1989 Act defines MMI as "the earliest date after which . . . further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." *See* Section 401.011(30).

The medical records provide sufficient evidence upon which Dr. B could base his determination that MMI was reached on July 30, 1993. The hearing officer's determination that Dr. B's 1998 report, which stated that MMI was reached on July 30, 1993, with a 10% IR, was not contrary to the great weight of the other medical evidence is not against the great weight and preponderance of the evidence. The findings of fact and conclusions of law attacked on appeal are sufficiently supported by the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge