APPEAL NO. 991693

A contested case hearing was originally held on January 22, 1999, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 990552, decided April 29, 1999, the Appeals Panel reversed the decision of the hearing officer; rendered a finding of fact that the report of Dr. A, the Texas Workers' Compensation Commission-selected designated doctor, dated October 2, 1998, is entitled to presumptive weight; and remanded for the hearing officer to determine whether the great weight of the other medical evidence is contrary to that report and to determine the date the appellant (claimant) reached maximum medical improvement (MMI) and the claimant's impairment rating (IR). The hearing officer held another hearing on July 15, 1999, at which additional evidence was not received and each party made arguments. The hearing officer rendered another decision on July 20, 1999, in which she made comments in the statement of the evidence and made findings of fact indicating why the October 2, 1998, report of Dr. A is not entitled to presumptive weight and made Finding of Fact No. 18 that states "[t]he great weight of the medical evidence other than [Dr. A's] report dated October 2, 1998 is contrary thereto." The hearing officer concluded that the claimant reached MMI on April 5, 1996, with a 12% IR as certified by Dr. A in a report dated July 19, 1996. The claimant appealed, contended that the hearing officer did not clearly detail the relevant evidence and clearly state why the great weight of the other medical evidence is contrary to the report of the designated doctor that is entitled to presumptive weight as the Appeals Panel has required, urged that Finding of Fact No. 18 and the conclusions of law of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the great weight of the other evidence is not contrary to the October 2, 1998, report of Dr. A and that the claimant reached MMI on August 6, 1997, by operation of law with a 17% IR as certified by Dr. A in his amended report dated October 2, 1998. The respondent (carrier) replied, contended that the hearing officer correctly detailed the relevant evidence to sufficiently support her decision, and requested that the decision of the hearing officer be affirmed.

DECISION

We reverse the decision of the hearing officer and render a decision that the claimant reached MMI on August 6, 1997, by operation of law and that his IR is 17% as certified by the designated doctor in his amended report dated October 2, 1998.

The evidence is summarized in Appeal No. 990552, *supra*. Briefly, the claimant injured his shoulder and low back on March 23, 1995. He did not immediately begin missing work and the parties stipulated that the date the claimant would reach MMI by operation of law is August 6, 1997. Disputes over the date the claimant reached MMI and his IR arose. Dr. A, the designated doctor, in a report dated July 19, 1996, certified that the claimant reached MMI on April 5, 1996, with a 12% IR. In an amended report dated October 2, 1998, Dr. A certified that the claimant reached MMI on April 7, 1998, with a 17%

IR. Based on several things, including the evidence, the statement of the hearing officer in the Decision and Order that the shoulder surgery was not a valid reason to amend the IR relative to the lumbar spine, and unappealed findings of fact, the Appeals Panel in Appeal No. 990552 reversed an implied finding of fact that the first report of Dr. A is entitled to presumptive weight and rendered a finding of fact that the amended report of Dr. A is entitled to presumptive weight.

It takes more than a mere balancing of the medical evidence to overcome the presumptive weight of the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92414, decided September 24, 1992. In Texas Workers' Compensation Commission Appeal No. 93123, decided April 5, 1993, the Appeals Panel wrote:

> We have previously stated that a hearing officer who rejects a designated doctor's report because the great weight of the other medical evidence is to the contrary must clearly detail the evidence relevant to his or her consideration, clearly state why the great weight of the other medical evidence is to the contrary, and further state how the contrary evidence outweighs the designated doctor's report. [Citations omitted.]

Review of the statement of the evidence and the findings of fact in the Decision and Order of the hearing officer reveal that she did not do so. We reverse the decision of the hearing officer and render a decision that the great weight of the other medical evidence is not contrary to the amended report of the designated doctor and that the claimant reached MMI by operation of law on August 6, 1997, with a 17% IR.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge