APPEAL NO. 991950

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 August 10, 1999. The issues at the CCH were the date of maximum medical improvement (MMI) and the impairment rating (IR). The hearing officer determined that the appellant (claimant) reached MMI on March 30, 1995, and that the IR was 10% as certified by a designated doctor. The claimant appeals, urging an IR of 25% assessed by her doctor on February 10, 1998, following a pain management program. Claimant also attaches documents to her appeal that were not offered or admitted as evidence at the CCH and they will not be considered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. Respondent (carrier) responds to the appeal, arguing that the decision is supported by sufficient evidence and that claimant has not shown that the great weight of other medical evidence is contrary to the certification of the designated doctor.

DECISION

Affirmed.

The claimant sustained an upper extremity injury from repetitive typing activity on _____; is not considered a candidate for surgery; and has had a course of severe chronic pain. Diagnosing her condition apparently required referral to several doctors and various conservative treatments. In any event, the claimant's then treating doctor, Dr. M, assessed a 13% IR on March 30, 1995. (It was agreed that the statutory MMI date in this case would be December 20, 1995). Apparently, because of a dispute, a designated doctor was selected by the Texas Workers' Compensation Commission (Commission), Dr. C, who in a comprehensive report dated June 22, 1995, determined MMI was reached as of March 30, 1995, and assessed a 10% IR. Claimant states her symptoms persisted and that a pain management program was denied by the carrier. She eventually went to a pain management program (apparently paid through other insurance) with good results and on February 10, 1998, the doctor she was then treating with, Dr. G, assessed an MMI date of February 10, 1998, with a 25% IR. At some subsequent time in 1999, the claimant apparently made unilateral contact with the designated doctor to seek his reevaluation of his certification rendered almost four years earlier. The designated doctor communicated with the Commission and a reexamination and reevaluation was not directed. The claimant urges that Dr. G's IR be adopted and argues that the designated doctor only spent about three hours and that Dr. G's rating was under his care and after she had completed a pain management clinic from which she improve significantly.

The hearing officer found that the great weight of the other medical evidence was not contrary to Dr. C's assessment of IR. The report of a designated doctor is accorded presumptive weight in the assessment of an IR and will be used unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). The burden of proof is on the party seeking to dispute the report of the designated doctor and showing that the

great weight of the other medical evidence is to the contrary. Texas Workers' Compensation Commission Appeal No. 950679, decided June 13, 1995. And, it takes more that just a balancing of the medical evidence to overcome the presumptive weight accorded a designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Further, a mere difference in medical opinion will not generally suffice to overcome the special status given the designated doctor under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 971063, decided July 23, 1997. From our review of the evidence of record, we cannot conclude that the determination of the hearing officer to accord presumptive weight to the report of the designated doctor was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge