APPEAL NO. 000997

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 10, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on July 9, 1999, with a seven percent impairment rating (IR). The claimant appeals, urging that he has not reached MMI. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury to his right shoulder on _____, when he turned a valve. The claimant's treating doctor, Dr. D, diagnosed a right rotator cuff tear and the claimant had surgery performed on October 8, 1998. In May 1999 the claimant ruptured the biceps tendon in his right arm while performing physical therapy exercises, but no surgery was performed. On May 14, 1999, the claimant had a right shoulder arthrogram which showed a small tear; however, Dr. D stated that he did not feel that a repeat surgery would be in the claimant's best interest. On July 13, 1999, Dr. D certified that the claimant reached MMI on July 9, 1999, with a seven percent IR.

The Texas Workers' Compensation Commission (Commission) appointed Dr. S as the designated doctor and he examined the claimant on September 14, 1999. Dr. S diagnosed the claimant with right rotator cuff tear, status post repair with residual symptoms; right first degree AC joint separation with symptoms; and right partial biceps muscle/tendon tear with mild loss of strength. Dr. S reviewed the right shoulder arthrogram of May 14, 1999, and stated that it showed a small tear, but that further intervention was not likely to produce further restorative functions. Dr. S certified that the claimant reached MMI on July 9, 1999, with a seven percent IR.

On November 8, 1999, Dr. D performed right shoulder arthroscopic surgery with debridement of the stump of the biceps tendon and a re-repair of a portion of the rotator cuff that did not heal. On December 17, 1999, Dr. D rescinded his certification of MMI and IR, stating in part, "[a]lthough he was at MMI his symptoms from this worsened, necessitating the second operation." The Commission contacted Dr. S and provided him with additional medical records, and Dr. S reiterated his opinion that the claimant reached MMI on July 9, 1999, with a seven percent IR.

The report of a Commission-selected designated doctor is given presumptive weight with regard to MMI status and IR. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption is the "great weight" of the other medical evidence. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. A mere difference in medical opinion is not enough to overcome the

presumption in favor of the designated doctor. Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996. The need for additional medical treatment does not mean that MMI was not reached at the time it was certified. Texas Workers' Compensation Commission Appeal No. 94720, decided July 14, 1994.

The designated doctor reviewed the arthrogram of May 14, 1999, and was aware of the possibility of a future surgery when he certified MMI and assigned an IR. The hearing officer found that Dr. S's certification of MMI and assignment of IR was performed in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. The hearing officer considered all of the medical evidence presented and did not find that the other medical evidence rose to the level of great weight against the certification of MMI and IR assigned by Dr. S. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we find the evidence sufficient to support the determination of the hearing officer that the claimant reached MMI on July 9, 1999, with a seven percent IR.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge