APPEAL NO. 001009

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 April 3, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 7, 1996, with a 10% impairment rating (IR); and that claimant's injury does not extend to or include depression. The claimant appealed, contending that her entire injury had not been considered or rated; that her IR should be higher than 10%; and that her injury should include her depression. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Claimant was apparently employed by a retailer (employer) in sales and stocking. The parties have accepted that claimant sustained a compensable injury on _____. Claimant described her injury as occurring when she was pushing a shopping cart thusly:

> The other end -- the door closed up on me, hit me up on my foot. And the shopping cart was on this side, so I couldn't pull my foot off of there. And the back -- the metal part, hit me across my back, and my head went back, and my neck popped. And this hand got caught on the shopping cart. She pulled that way. It was like that. That's why this hurts real bad.

Claimant had carpal tunnel syndrome (CTS) release surgery on her left hand in January 1996, another left hand surgery either toward the end of 1996 or early 1997 (medical evidence suggests November 23, 1996) and CTS release surgery on the right hand on June 25, 1998. Claimant asserts that she sustained injuries to her neck, upper back, right foot, left hand, right hand and depression due to the accident. Dr. C, is the treating doctor, Dr. H is the surgeon, and the parties stipulated that Dr. GH is the designated doctor. Dr. K is the treating psychiatrist.

Dr. G, carrier's required medical examination (RME) doctor, in a report dated April 3, 1996 (after the first surgery and before the last two surgeries), apparently was also considering an unrelated 1994 injury to completely different body parts, not at issue here, and assessed a 22% IR. Dr. C, in a report dated August 18, 1996, certified MMI on August 7, 1996, with an 18% IR, based on four percent impairment for the cervical spine from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), one percent loss of cervical flexion/extension from Table 51 (the ankylosis table) and 14% impairment from the upper left extremity which, when combined in the Combined Values Chart, comes to an 18% whole person IR.

Dr. GH, on a Report of Medical Evaluation (TWCC-69) and narrative dated September 24, 1996, states that he has been appointed "to determine percentage of impairment only" and that he is "to assume that the [MMI] was reached on August 7, 1996." Dr. GH recites the reports he has reviewed, including Dr. C's report and evaluations on which Dr. C based his IR, and assessed a 10% IR based on five percent impairment for cervical range of motion (ROM), four percent impairment for lumbar ROM and one percent for thoracic ROM. In a letter dated April 23, 1998 (18 months after Dr. GH's report and one surgery), to the Texas Workers' Compensation Commission (Commission), claimant's attorney challenged Dr. GH's IR, asserting impairments from Table 49, as well as additional ROM, should have been included in the whole person IR. The Commission wrote Dr. GH in a letter dated April 28, 1998, asking for clarification and forwarding claimant's April 23, 1998, letter. Dr. GH replied by letter dated May 3, 1998, stating he had reviewed claimant's April 23rd letter, as well as additional MRI studies, Dr. GH's operative reports and Dr. G's report. Dr. GH wrote:

> I did not give an [IR] for cervical, thoracic or lumbar pain according to Table 49, Section 2-B. The [AMA Guides] do have a section in Table 29, 2-B, for patients who have minimal changes on imaging studies and pain greater than six months' time. There is, however, a requirement under the Texas Workmen's Compensation Guidelines that there be objective evidence of injury for impairment to be given. There is no objective evidence of injury in the neck, upper or low back on these imaging studies, and the changes are consistent with the patient's age.
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> The patient manifests normal strength, full [ROM] of the wrist, and would have zero percent impairment for loss of strength or [ROM] of the wrist. I believe the [IR] that I performed has been correctly performed under the TWCC Guidelines and [AMA Guides].

Dr. K, the psychiatrist, references not only claimant's compensable injuries, but also arthritis and other conditions. Dr. K's progress notes are in longhand and, while portions can be deciphered, are arguably illegible. Claimant apparently began treating with Dr. K on October 23, 1997. In a letter report dated August 5, 1999, to the Commission, Dr. K discusses claimant's symptoms and, in another letter, dated September 1, 1999, commented:

> She has been diagnosed and treated with Major Depression Severe Recurrent and Chronic neck and back pain with severe Arthritis, which was caused by her injury at her employment. [Claimant] gets episodes of severe depression due to the pain stops sleeping, eating and feels hopeless, helpless and has very low self-esteem. She has very poor attention, concentration and memory skills. She becomes very somatic, negativistic and is one hundred percent disabled to perform any work activity on a

persistent bases. She will be in need of treatment with antidepressants and pain medication for an indefinite amount of time.

The hearing officer, in challenged findings, determined:

FINDINGS OF FACT

2. Claimant's MRI's of the thoracic, cervical and lumbar spine taken after the date of injury were normal.

3. An MRI of the cervical spine taken two years after the date of injury was normal.

4. The Commission designated doctor assigned Claimant a ten percent whole body [IR] with [MMI] on August 7, 1996.

5. The designated doctor reviewed other records in 1998 and refused to change his [IR].

6. Claimant first saw [Dr. K], M.D., a psychiatrist, on October 23, 1997, over a year after [MMI] was assigned.

7. The great weight of the other medical evidence is not contrary to the report of the Commission designated doctor as to date of [MMI] and whole body [IR].

8. Claimant was not a credible witness and tried to add additional body parts to the injury at the [CCH].

9. Claimant's injury does not include or extend to depression.

Claimant's appeal generally challenges all the adverse findings, including the MMI date. We note that Dr. H said that he was not appointed to certify an MMI date; however, his TWCC-69 does contain a certification of MMI on August 7, 1996, and no other report has an MMI date other than August 7, 1996. Claimant's position at the benefit review conference (BRC) and CCH was that the MMI date should be the date claimant reached MMI by operation of law (Section 401.011(30)(B)). Whether the MMI date was actually the one certified by the designated doctor, or was the date certified by Dr. C, the treating doctor, there is no other medical evidence of another MMI date.

Section 408.125(e) provides with respect to the determination of an injured employee's IR that the report of the designated doctor is entitled to presumptive weight and that the Commission shall adopt such report unless it is contrary to the great weight of the other medical evidence. The Appeals Panel has long since stated that it is not just equally balancing evidence or even a preponderance of the evidence that can outweigh the

designated doctor's report but rather a "great weight" of other medical evidence is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Further, we have emphasized the unique position that a designated doctor occupies under the 1989 Act in resolving disputes concerning MMI dates and IR issues and that no other doctor's report, including that of a treating doctor, is accorded this special, presumptive status. Appeal No. 92412. We have also said that the report of the designated doctor should not be rejected "absent a substantial basis" for doing so. Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993.

Regarding the issue of whether the compensable injury of _____, extends to depression, the hearing officer noted that claimant did not see Dr. K until over a year after MMI was assigned (and after MMI would have been reached by operation of law) and that claimant was being treated for other non work-related conditions. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain, *supra*. We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge