APPEAL NO. 001311

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 May 5, 2000. The hearing officer concluded that the appellant (claimant) reached maximum medical improvement (MMI) on May 12, 1997, with a zero percent impairment rating (IR), based on the report of Dr. D, the designated doctor. The claimant has filed a request for our review which essentially challenges the sufficiency of the evidence to support the hearing officer's determination. The respondent (carrier) asserts in response that the evidence is sufficient and urges our affirmance.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury and that Dr. D is the designated doctor selected by the Texas Workers' Compensation Commission (Commission).

The claimant testified that she was injured when she slipped on a damp kitchen floor while working as a custodian at the employer's school; that she was first treated by Dr. C, whose records were not introduced into evidence; and that since August 1997, she has been treated by Dr. HC. She stated that she initially rejected Dr. HC's recommendation for lumbar spine surgery and that, when she later agreed to it, a second-opinion doctor failed to concur and the Commission disapproved the request. The claimant also twice stated that she has not improved with Dr. HC's conservative care including a pain management program. She further stated that the designated doctor checked the feeling in her lower extremities and had her stand on her heels and do other things but was unable to complete the testing because of her pain. The claimant also testified at some length about her inability to work notwithstanding that neither disability nor supplemental income benefits were in issue. She stated that she disagreed with the designated doctor's MMI date and zero percent IR and agreed with Dr. HC's MMI date and IR of 12%. She argued that she should have received some percentage of impairment under Table 49 in the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

In evidence is a Report of Medical Evaluation (TWCC-69) signed by Dr. J on May 21, 1997, which states that the claimant reached MMI on "05/12/97" with a "0%" IR. In his accompanying narrative report to the carrier Dr. J states that his impression is lumbar strain, proximal thigh strain, and arthritic changes of the pelvic and lumbar spine. Commenting that he could not understand why the claimant was having such problems from the fall in January and that she had the arthritic changes before the fall, Dr. J concluded that the claimant is at MMI and that he found "no definite disability or impairment."

Dr. D's TWCC-69, dated July 16, 1997, certifies that the claimant reached MMI on May 12, 1997, with an IR of "0%." In his accompanying narrative report Dr. D states that the claimant sustained a sprain/strain involving the lumbosacral spine and right groin and that she has preexisting lumbar disc degeneration and spondylosis. Dr. D further stated that on physical examination the claimant's symptoms are magnified and her responses exaggerated, and that she has five of five Waddell's nonorganic signs. Dr. D also recounts how the claimant complained of pain and was unable to cooperate when he attempted to measure her lumbar spine range of motion (ROM) with two inclinometers. Dr. D concluded that he concurred with Dr. J's MMI date of May 12, 1997, with a zero percent IR.

Dr. HC stated in a September 2, 1997, report that his impression is lumbar pain syndrome and symptom magnification, as demonstrated by positive Waddell's tests. Dr. HC wrote on June 23, 1998, that the claimant was previously assigned a zero percent IR; that he believes the IR was not assigned according to the AMA Guides; that the claimant was assigned a zero percent IR by both Dr. J and Dr. D; and that the ROM was invalid but was not rechecked and thus it "would appear that the assignment of 0% impairment is not a fair assignment of impairment."

The April 3, 1998, TWCC-69 of Dr. M, a neurologist who evaluated the claimant for the carrier on April 2, 1998, states that the claimant reached MMI on "5/12/97" with an IR of "0%." In his accompanying narrative report Dr. M diagnosed musculoskeletal strain of the lumbosacral spine, disc dessication at L4-5, and factitious disorder with physical signs and symptoms. His transmittal letter also noted many inconsistencies in the neurological evaluation including pain behavior.

Dr. HC's TWCC-69 dated "01/08/99" states that the claimant reached MMI on "12-18-98" with an IR of 12%. Dr. HC's accompanying narrative report states that he assigned the claimant seven percent under Table 49 II C for a symptomatic annular tear and five percent for limited ROM. Dr. HC wrote on January 27, 1999, that while he determined that the claimant reached MMI on December 18, 1998, "from a nonoperative point of view," she may require surgery in the future but has decided not to pursue it at the present time. On July 30, 1999, Dr. HC reported that the claimant has been diagnosed with a disrupted disc at L4-5 as well as segmental spinal instability and has finally decided to proceed with surgery.

On August 25, 1998, Dr. D responded to a Commission letter forwarding Dr. HC's letter of June 23, 1999, and requesting certain information. Dr. D stated that he had seen and reviewed the claimant's records and x-rays; that he attempted to measure the claimant's lumbar spine ROM but she was unable to cooperate, complaining of severe lower back pain; that the claimant's symptoms were magnified and her responses exaggerated; and that she had five of five Waddell's nonorganic signs. Dr. D concluded that, having read the forwarded records of Dr. HC, his opinions as to the MMI date and IR remained unchanged.

Dr. S, a neurologist, reported on February 10, 2000, that he examined the claimant and reviewed her medical records upon the referral of Dr. G, to whom the claimant was referred for pain management. He noted that Dr. M, who examined the claimant on April 2, 1998, found evidence of a factitious disorder and stated that he found symptom magnification. Dr. S concluded that the claimant's injury should have resolved spontaneously within four to six weeks and that he agrees with Dr. M, and with both Dr. J and Dr. D who are orthopedic surgeons, that the claimant sustained nothing more than a muscle strain when she slipped and fell on _____. He also commented that the claimant is not a candidate for spinal surgery and that discograms are controversial and considered to be of no clinical value by the Department of Health and Human Services.

The hearing officer found Dr. D's findings that the claimant reached MMI on May 12, 1997, with an IR of "0%" are not contrary to the great weight of the other medical evidence but rather are supported by the medical record, and that Dr. D's findings are valid and entitled to presumptive weight.

Sections 408.122(c) and 408.125(e) provide that the report of the designated doctor selected by the Commission shall have presumptive weight with respect to the date of MMI and the IR unless such report is contrary to the great weight of the other medical evidence. The Appeals Panel has often noted the important and unique position occupied by the designated doctor under the 1989 Act (Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992) and we have just as often stated that a "great weight" determination amounts to more than a mere balancing or preponderance of the medical evidence (Appeal No. 92412) and that the report of the designated doctor should not be rejected "absent a substantial basis to do so" (Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993).

Given that both Dr. J and Dr. M also determined that the claimant reached MMI on May 12, 1997, with a zero percent IR, we are satisfied that the hearing officer's determinations are not against the great weight of the evidence. 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).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge