APPEAL NO. 001400

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 16, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on October 5, 1999, with an impairment rating (IR) of six percent for the compensable right knee injury of _____. The claimant appealed, contending that he is not yet at MMI. The respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in according presumptive weight to the designated doctor's report. He asserts that he is not yet at MMI because he still has right knee pain and should be permitted to have surgery. Claimant notes that: (1) Dr. M did not merely state that claimant refused to wear his knee brace, but also noted that claimant found the brace painful; (2) Dr. M refused to acknowledge that the knee brace was aggravating claimant's pain; (3) Dr. M stated that claimant may need knee surgery in the future; (4) the designated doctor, Dr. F, saw claimant only on one occasion; (5) the designated doctor became angry with claimant and rushed through the examination; and (6) the designated doctor did not perform MRI or other testing.

Claimant testified that on _____, his right knee was injured when a heavy "rock" fell on the back of his leg. Claimant said he initially saw Dr. W at (medical center), who sent him to Dr. B. Dr. B's medical records indicate that he referred claimant to Dr. M. After MRI testing and arthroscopic surgery, claimant was diagnosed with a partial tear of the anterior cruciate ligament, a mild degenerative tear of the posterior horn medial meniscus, and other degenerative changes. In his last report, dated August 10, 1999, Dr. M said:

> It may be that the ACL was completely torn but healed up . . . . If he . . . should develop instability down the road, that would be an indication that this anterior cruciate ligament probably was partially injured, but never healed completely . . . and at that point, he may need to have anterior cruciate ligament reconstruction. However, at this point, I cannot recommend that.

Claimant said two doctors have certified an IR for his knee injury. In August 1999, Dr. B, who performed the arthoscopic surgery, certified that claimant reached MMI on August 24, 1999, with an IR of nine percent. Four months later, the designated doctor certified that claimant reached MMI on October 5, 1999, with an IR of six percent.

The report of a Texas Workers' Compensation Commission (Commission)-selected designated doctor is given presumptive weight with regard to MMI status and IR. Sections

408.122(b) and 408.125(e). The amount of evidence needed to overcome the presumption is the "great weight" of the other medical evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992.

MMI is defined, as pertinent to this case, as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated . . . ." Section 401.011(30)(A). The presence of pain is not, in and of itself, an indication that an employee has not reached MMI. A person who is assessed to have lasting impairment may indeed continue to experience pain as a result of an injury. Texas Workers' Compensation Commission Appeal No. 93007, decided February 18, 1993. The fact that an employee still requires treatment for an injury does not mean that he or she is not at MMI. Texas Workers' Compensation Commission Appeal No. 94045, decided February 17, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant complains that he is not at MMI, that he cannot work, and that he needs knee surgery. Whether claimant needs surgery is not an issue before us. The fact that a claimant may need future medical treatment and may possibly undergo surgery does not necessarily mean that he is not at MMI, although a subsequent surgery is sometimes grounds to amend an IR report. *See* Appeal No. 94045, *supra; see also* Texas Workers' Compensation Commission Appeal No. 992951, decided February 14, 2000. Whether claimant is at MMI was a question considered by the designated doctor and the hearing officer accorded presumptive weight to the designated doctor's report. The hearing officer determined the great weight of the other medical evidence is not contrary to the findings of the designated doctor. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

Claimant complains that the designated doctor saw him for only a short period and did not perform diagnostic testing, so he could not properly certify an IR. However, claimant said the designated doctor "felt around" on his knee and told him to "bend it a couple of times." The designated doctor's report indicated that he performed range of motion testing and sensory testing. In a letter, the designated doctor stated that he spent about ten minutes actually examining claimant's knee, that claimant's diagnosis is not in

question, that no further diagnostic tests were needed, and that an experienced orthopedic surgeon should be able to examine a knee in ten minutes. The designated doctor's report indicates that he reviewed medical records including MRI test results and findings from claimant's arthroscopic surgery. We perceive no error.

Claimant complains that the hearing officer stated that the doctor who examined claimant at claimant's expense, Dr. A, said that surgery was not recommended "at this time" and that claimant "did not demonstrate his willingness" to participate in strengthening exercises. Claimant contends that Dr. A actually stated that surgery would be a "major benefit" once claimant's leg "gets strong enough." In a February 7, 2000, letter, Dr. A stated:

> I think [claimant] does require an anterior cruciate reconstruction if, and the big if is, if he will rehabilitate his leg. . . . After seeing [claimant], examining him, and talking to him, I can understand some of his physician's reluctance to just jump in and do [surgery] as there is question about his dedication to re-strengthen his leg enough . . . .

From this evidence, we conclude that the hearing officer did not misstate the evidence in this regard. Claimant complains that the hearing officer did not mention that Dr. B said it is "probable" that claimant will need surgery and that the hearing officer ignored the evidence that claimant had work restrictions. However, the hearing officer was not required to set forth all of the evidence in his decision and there is nothing in the record to indicate that the hearing officer did not consider all the evidence in this case. After reviewing claimant's brief and the record, we perceive no reversible error.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge