APPEAL NO. 001630

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 June 26, 2000. The hearing officer determined that the report of the designated doctor, Dr. M, is not contrary to the great weight of the other medical evidence and that based on Dr. M's report the appellant (claimant) reached maximum medical improvement (MMI) on October 28, 1999, with a zero percent whole body impairment rating (IR). We will treat the claimant's appeal as a request for review of the sufficiency of the evidence to support the MMI and IR determinations of the hearing officer. The respondent (carrier) urges in its response that the evidence is sufficient to support the MMI and IR determinations.

DECISION

Affirmed.

Not challenged are the hearing officer's findings that on _____, the claimant sustained a lower back injury when someone hit her in the back with a can of air freshener as she was performing her job duties; that Dr. M was appointed as the designated doctor by the Texas Workers' Compensation Commission (Commission); and that on December 22, 1999, Dr. M certified that the claimant reached MMI on October 28, 1999, with a zero percent IR.

The claimant testified that on _____, she took a can of air freshener from a client of the rehabilitation center where she worked and told her to stop spraying air freshener on the restroom mirror and that when she turned to open the restroom door for the client, the latter hit her in the back with the can and she "hit the floor," injuring her low back. She further indicated that she was "disabled" from a prior back injury when she took the job with the employer and said she could not account for some of the medical records stating that she had previously declined spinal surgery.

The claimant further testified that two doctors have determined that she has reached MMI and have assigned her an IR, namely, Dr. K, who examined her for the carrier, and Dr. M who was selected as the designated doctor after she disputed Dr. K's MMI date and IR. She also said that her current treating doctor, Dr. L, does not feel she has reached MMI. She noted that she has a lot of pain for which she takes medications and that she uses a cane. The claimant also stated that Dr. K had a "nasty attitude" when he examined her and told her to quit faking. She also indicated that Dr. M hardly touched her during his examination other than to try to lift her leg.

In evidence is the October 28, 1999, Report of Medical Evaluation (TWCC-69) of Dr. K which states that the claimant had reached MMI as of that date with an IR of zero percent. At the bottom of the form, a former treating doctor, Dr. B, checked the blocks indicating his disagreement with Dr. K's determinations. In his narrative report, Dr. K states that claimant had a prior low back injury 20 years earlier which resulted in complete

disability with payments from Social Security and that she commenced her job with the employer about six months before the date of the injury. Dr. K's diagnosis is "low back pain" and "work related injury from _____." Dr. K also states that the claimant gave evidence of pain magnification and incomplete effort, that her range of motion (ROM) measurements were invalid, and that she should return to her regular work activities.

Also in evidence is the December 21, 1999, TWCC-69 of Dr. H which states that the claimant has not reached MMI and which does not assign an IR. At the bottom of this form Dr. B has checked the blocks indicating his agreement with Dr. H's determinations. The medical records reflect that Dr. B began treating the claimant on May 3, 1999.

Dr. M's December 22, 1999, TWCC-69 states that the claimant reached MMI on October 28, 1999, with an IR of zero percent. In his accompanying narrative report Dr. M indicates that his evaluation was conducted in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. On his lumbar ROM worksheet Dr. M wrote that the measurements did "not correlate with observed facts." Dr. M also notes that the claimant has a previous back injury for which she receives Social Security benefits.

Sections 408.122(c) and 408.125(e) provide that the report of the Commission-selected designated doctor concerning the date of MMI and the IR will be given presumptive weight and that the Commission will make those determinations based on such report unless it is against the great weight of the other medical evidence. The hearing officer determined that Dr. M's report certifying to the MMI date of October 28, 1999, and assigning an IR of zero percent is entitled to presumptive weight. Notwithstanding the apparent disagreement of Dr. H and Dr. B, and perhaps Dr. L, we are satisfied that the hearing officer's determinations are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We cannot say that the stated disagreements of Dr. H and Dr. B, and perhaps of Dr. L, constitute the great weight of the medical evidence contrary to Dr. M's report. Dr. M's report is supported by the report of Dr. K.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Thomas A. Knapp
Appeals Judge