APPEAL NO. 001695

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 January 11, 2000. The record closed on June 16, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on January 20, 1999, with a 10% impairment rating (IR), in accordance with the report of the designated doctor, which was not overcome by the great weight of the contrary medical evidence.

The claimant appealed, complaining that she was not at MMI when the designated doctor examined her and that she improved after that. She argues that the hearing officer issued a decision although the designated doctor did not respond to his request for information. The respondent (self-insured) responded that the hearing officer went beyond what he was required to do in seeking the designated doctor's opinion about x-rays. The self-insured asserts that the decision is supported by the record.

DECISION

We affirm the hearing officer's decision.

The claimant injured her back and right knee on _____. She had knee surgery. The claimant was certified to be at MMI on September 30, 1998, with a 14% IR by Dr. G. Her treating doctor, Dr. GD, agreed with this, but wrote on April 12, 1999, that he rescinded his agreement. The reason he gave was that the claimant had a spinal cord stimulator implanted on January 21, 1999, which Dr. GD said had greatly increased the claimant's range of motion (ROM) and reduced her pain. However, on July 7, 1999, Dr. GD certified that the claimant reached MMI on May 10, 1999, with a 14% IR. The description of the claimant's continued pain and ROM deficits was less glowing than in Dr. GD's April 1999 letter.

In between these reports, on January 20, 1999, the claimant was examined by Dr. B, the designated doctor. He assessed most of his 10% IR for the claimant's knee, noting that the claimant's lumbar ROM was invalid due to the considerable discrepancy between her seated straight leg raising (SLR) test and the supine SLR test. Dr. B's report indicated he was aware that the claimant was having a spinal cord stimulator inserted the next day. When Dr. B was later contacted about this, he responded that the fact of having the stimulator alone would have no effect on his IR and noted that most of it had been due to knee impairment.

At the CCH, the claimant complained that Dr. B said he did not have x-rays to review, although she had brought them with her. The materiality of these x-rays on the IR, however, was not explained. The hearing officer said that he would contact Dr. B about whether the x-rays needed to be reviewed by him, and did so, but there was no response.

The hearing officer went ahead and issued a decision adopting the IR and MMI date of Dr. B.

Without there being some indication as to what the x-rays would have demonstrated to the designated doctor that was material in determining an IR, it is unclear why the request to the designated doctor should have been made or the results obtained prior to issuance of this decision. The objective tests and medical records that were considered by Dr. B and are recited in his report are numerous. In addition, he indicated that he reviewed reports of x-rays of the elbow and right knee, even if another portion of his narrative stated that no x-rays were available for review. It appears that Dr. B had pertinent records upon which to base his evaluation.

The report of a Texas Workers' Compensation Commission-appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption, a "great weight," is more than a preponderance, which would be only greater than 50%. *See* 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. 92164, decided June 5, 1992. The hearing officer had all pertinent information before him to consider whether the great weight was against either the IR or date of MMI.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge