APPEAL NO. 001980

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 August 9, 2000. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on January 9, 1993, with an impairment rating (IR) of eight percent, as certified by the Texas Workers' Compensation Commission (Commission)-selected designated doctor, Dr. T. The hearing officer also determined that claimant had disability from January 15, 1993, through April 8, 1993, only, and not continuing. Claimant appealed these determinations on sufficiency grounds. 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 the hearing officer should have adopted the report of his treating doctor, Dr. G, in which Dr. G certified that claimant reached MMI on December 11, 1993, with a 31% IR. Claimant contends that: (1) he did not reach MMI until the statutory MMI date, which he states is December 15, 1993; and (2) he is entitled to the doctor of his choice, and his treating doctor's IR should be adopted.

Claimant did not testify at the hearing. There was evidence that claimant sustained a compensable injury to his back and knees in _____ and that claimant had not returned to work as of 1998. Claimant underwent back surgery in September 1995. Dr. G's 31% IR was certified after that surgery.

The designated doctor filed his first Report of Medical Evaluation (TWCC-69) on March 11, 1994, certifying that claimant reached MMI on March 11, 1994, with an IR of eight percent. Apparently, an adjuster sent a note directly to the designated doctor informing the designated doctor about the other IRs certified by other doctors and stating that claimant's statutory MMI date was in December 1993. The designated doctor amended his IR report on April 25, 1994, to state that claimant reached MMI on January 9, 1993, but kept the IR at eight percent. The designated doctor was apparently reacting to the fact that the MMI date he first found was after the statutory MMI date. The eight percent IR included impairment for loss of range of motion in the left knee and for specific disorders of the lumbar spine. The hearing officer set forth the other IRs from other doctors that were contained in the record.

The report of a Commission-selected designated doctor is given presumptive weight with regard to maximum medical improvement 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. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. A mere difference in medical opinion is

not enough to overcome the presumption in favor of the designated doctor. Texas Workers' Compensation Commission Appeal No. 960034, decided February 5, 1996.

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 have been 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.

We have reviewed the briefs and the record, including the designated doctor's report, and 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer was not required to adopt the treating doctor's IR report under the facts of this case and did not err in according presumptive weight to the designated doctor.

Claimant contends that the hearing officer erred in determining that he did not have disability from April 9, 1993, to December 15, 1993.[1] The hearing officer determined that claimant had disability from January 15, 1993, through April 8, 1993, only. There was medical evidence dated April 8, 1993, from Dr. K that Dr. K did not know what would stop claimant from going back to work. However, claimant contended that he could not work in 1993 and his treating doctor had not released him to return to work. Claimant points to medical evidence that he contends supports his disability claim. The issue of disability involves a fact question for the hearing officer. She reviewed the medical evidence and determined what facts were established. We have reviewed the evidence and we conclude that the hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

[1]We note that these dates are after the MMI date found by the designated doctor.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge