APPEAL NO. 011040
FILED JUNE 12, 2001

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 April 23, 2001. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on February 3, 2000, with a 14% impairment rating (IR) as assessed by the designated doctor.

The claimant appeals, asserting that the designated doctor's report is contrary to the great weight of other medical evidence and that the MMI date should be "2/6/00 [sic, probably means 2001]" with a 19% IR. The respondent (carrier) responds, stating that since the claimant did not appeal certain conclusions of law they have become final by operation of law, and otherwise urges affirmance.

DECISION

Affirmed as reformed.

Both the claimant and the carrier point out that the hearing officer inadvertently left out the right elbow as part of the compensable injury in her Finding of Fact No. 2. The hearing officer's discussion and reports make clear that the right elbow is part of the compensable injury and we so reform the hearing officer's Finding of Fact No. 2 to include the "neck, back, right shoulder, and right elbow."

The carrier asserts that since the claimant did not specifically appeal Finding of Fact No. 10 and Conclusions of Law Nos. 3 and 4, those determinations "have become final by operation of law." We reject the carrier's contention. The claimant has made it very clear that he is appealing the MMI date and IR found by the hearing officer and conformity to the legal rules of pleading is not necessary.

On the merits, there was no testimony and the case was submitted based on the medical reports and argument. The parties stipulated that the claimant sustained a compensable injury on _____. Dr. D, the claimant's treating doctor, in a report of February 7, 2001, certified MMI on February 6, 2001, with a 35% IR. (Exactly how that IR was calculated is not evident from the report.)

Dr. M was appointed as the designated doctor and, in a Report of Medical Evaluation (TWCC-69) and narrative dated February 3, 2000, Dr. M certified MMI on that date with a 12% IR based on a 5% impairment for a specific disorder of the lumbar spine, 3% impairment for lumbar loss of range of motion (ROM), 2% impairment for shoulder loss of ROM, and 2% impairment "for cervical spine motion" combined for a 12% whole person IR. A Texas Workers' Compensation Commission (Commission) benefit review officer wrote Dr. M, by letter dated October 3, 2000, raising several issues, including that no impairment had been assessed for a specific disorder of the cervical spine from Table 49

of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, and pointing out that the lumbar specific disorder under Section II(C) did not correlate with the 5% impairment.

Dr. M responded with an amended ("update") TWCC-69 and narrative dated October 23, 2000, where he again certified MMI on February 3, 2000, but changed the IR to 14% conceding that he had looked in the wrong column of Table 49 and the specific disorder of the lumbar spine was 7% instead of the 5% as previously assessed. Regarding his failure to assess a specific disorder rating for the cervical spine, Dr. M wrote:

> I do not think that he has a significant cervical lesion or findings to warrant giving him an additional impairment for specific disorders under the cervical spine, so my total impairment would be 14% whole person.
>
> * * * *
>
> In terms of the cervical spine MRI, I did not appreciate a significant disc herniation nor do I find any significant clinical abnormalities that would be related to a cervical disc herniation.

The hearing officer notes that at issue in this case is whether or not the claimant has a herniated cervical disc or discs which warrant an IR. Certainly, Dr. D and some other doctors maintain that there are cervical tears and herniations based on MRI and diagnostic studies; however, Dr. M reviewed the tests and concluded that there were no clinical abnormalities which warranted a rating.

The claimant, at the CCH and on appeal, relies heavily on Texas Workers' Compensation Commission Appeal No. 94471, decided June 7, 1994, which he believes requires the designated doctor to assess a specific disorder IR for the cervical spine. Appeal No. 94471 is usually cited for the proposition that "it can reasonably be expected that a designated doctor will assign a rating based on the herniation or provide an explanation for not doing so." Texas Workers' Compensation Commission Appeal No. 001091, decided June 29, 2000. In this case, Dr. M gave his reason, which was accepted by the hearing officer. We would also note that while Appeal No. 94471, *supra*, was a reversal, it also remanded the case back to the hearing officer to allow the designated doctor an opportunity to explain his reason for not assessing a rating from Table 49. In this case, the medical evidence is conflicting as to whether or not the claimant has a herniated disc or some "other soft tissue lesions" which warrants a rating from Table 49.

Sections 408.122(c) and 408.125(e) of the 1989 Act provide that the report of a Commission-appointed designated doctor determining the date of MMI and the claimant's IR shall have the presumptive weight and the Commission shall base its determination on such report, unless the great weight of the other medical evidence is to the contrary. We have held that the "great weight" determination requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including the treating doctor's

report, is accorded the special presumptive status; and that the designated doctor's report should not be rejected absent a substantial basis for doing so. Texas Workers' Compensation Commission Appeal No. 960897, decided June 28, 1996.

We do not find the hearing officer's decision to be against the great weight and preponderance of the evidence. Accordingly, the hearing officer's decision and order are affirmed as reformed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge