APPEAL NO. 011389
FILED AUGUST 01, 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 was held on May 22, 2001. The hearing officer determined that (1) the appellant (claimant) reached maximum medical improvement (MMI) on December 14, 1999; and (2) the claimant had an impairment rating (IR) of 13%. In doing this, the hearing officer did not credit the disallowance by the designated doctor of valid 9% IR for range of motion (ROM) deficits, and found that the designated doctor had not properly followed the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. By implication, he found that the great weight was against the designated doctor's report without this ROM IR, and he adopted the entire report of the designated doctor, which totaled 13%.

The claimant appeals the hearing officer's MMI determination on sufficiency grounds. The respondent (carrier) urges affirmance of the MMI determination but requests reversal of the IR determination if the relief sought by the claimant is granted. The response is not timely as a cross-appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant reached MMI on December 14, 1999. Section 408.122(c) provides that the report of a Texas Workers' Compensation Commission (Commission)-appointed designated doctor determining the date of MMI shall have presumptive weight and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. We have held that a "great weight" determination requires more than a mere balancing or preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 960897, decided June 28, 1996. Medical evidence, not lay testimony, is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92166, decided June 8, 1992. The designated doctor's report is not inconsistent with the great weight of other medical evidence, including the only other MMI/IR certification in the record of this proceeding, a report by the carrier-selected required medical examination doctor, who certified that the claimant reached MMI on December 9, 1999.

The claimant asserts that he had not reached MMI on December 14, 1999, because he continued to be treated for pain following that date. We have said that the presence of pain is not, in and of itself, an indication that an employee has not reached MMI. Texas Workers' Compensation Commission Appeal No. 93007, decided February 18, 1993. Likewise, the need for continued medical treatment does not mean that MMI has not occurred. The hearing officer's MMI 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 (Tex. 1986). Because we have not granted the relief sought by the claimant, we need not remand for further determination of the IR and will not otherwise consider the matter, as no timely appeal of IR was filed.

The decision and order of the hearing officer is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge