APPEAL NO. 011638
FILED AUGUST 29, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on May 7, 2001. The hearing officer determined that the opinion of the designated doctor that the respondent (claimant) reached maximum medical improvement (MMI) on January 20, 2000, is against the great weight of the other medical evidence. The appellant (self-insured) contends on appeal that this determination is against the great weight of the evidence and requests that we reverse and render a decision that the claimant reached MMI on January 20, 2000. The claimant's response urges the sufficiency of the evidence to support the challenged determination.

DECISION

Affirmed.

The hearing officer did not err in determining that the designated doctor's opinion that the claimant reached MMI on January 20, 2000, is against the great weight of the other medical evidence. The medical records reflect that following the claimant's compensable low back injury on _____, she was treated conservatively by Dr. H; that Dr. H referred her to Dr. VK, who examined her on November 10, 1999, and recommended a course of epidural steroid injections (ESI); that the claimant had severe headaches and temporary paralysis after the first ESI; that Dr. VK then recommended lumbar spine fusion surgery with instrumentation at the L5-S1 level; and that the claimant was examined in January 2000 by Dr. W, a second-opinion doctor, who concurred with spinal surgery. The claimant was examined on January 20, 2000, by the designated doctor, who felt that the claimant's symptoms were subjective and accounted for by morbid obesity and symptom magnification; that the claimant's symptoms were subjective and her findings inconsistent; that she would not benefit from the proposed spinal surgery; and that she had reached MMI as of that date with an impairment rating (IR) of five percent. On February 17, 2000, the claimant was examined by Dr. AK, another second-opinion doctor, who concurred with spinal surgery; and on December 4, 2000, she underwent the spinal surgery by Dr. VK. The claimant testified that since the surgery, her pain has decreased, as has numbness and tingling in her left leg, and that she can sit, stand, and walk for longer periods.

The carrier contended that both Dr. A, a required medical examination doctor who examined the claimant in October 1999 and assigned a zero percent IR, and the designated doctor, felt that the claimant's back symptoms were attributable to a prior back injury as well as to morbid obesity and symptom magnification, and that the designated doctor felt that spinal surgery was not indicated. In three addenda to his report responding to Texas Workers' Compensation Commission (Commission) inquiries, the designated doctor continued to maintain that the claimant had reached MMI as of January 20, 2000.

Section 408.122(c) provides that the report of the designated doctor has presumptive weight and that the Commission shall base its determination of whether the employee has reached MMI on the report unless the great weight of the other medical evidence is to the contrary. In reaching her determination, the hearing officer explains that the claimant was under active consideration for spinal surgery when she was examined by the designated doctor and that Dr. H, Dr. VK, Dr. AK, and Dr. W all felt that the surgery was indicated because conservative treatment had failed to relieve her symptoms and that she had not reached MMI on January 20, 2000. Notwithstanding our awareness of the unique role the designated doctor plays in the resolution of MMI and IR disputes, and that the great weight of the other medical evidence requires more than a mere balancing of differing professional opinions, we are nonetheless satisfied that the challenged determination in this case is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge