APPEAL NUMBER 94973
FILED SEPTEMBER 1, 1994

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 23, 1994, a contested case hearing (CCH) was held in (City), Texas, with (hearing officer) presiding. The issues were whether the appellant, who is the claimant herein, had reached maximum medical improvement (MMI) for her back injury of _____, and, if so, her correct impairment rating. Claimant had been injured while employed by (Employer).

The hearing officer determined that the claimant had reached MMI on April 2, 1993, with a 10% impairment rating, based upon the report of the designated doctor.

The claimant has filed a signed copy (in the sample certification block) of the blue brochure published by the Texas Workers' Compensation Commission (Commission), entitled "Review of Claims Disputes by the Commission's Appeals Panel." The carrier responds that this is inadequate as an appeal and does not comply with Section 410.202 of the 1989 Act. The carrier also responds that the record supports the hearing officer's decision.

DECISION

We affirm the hearing officer's decision and order, finding that it was supported by sufficient evidence and that it was not appealed in accordance with the statutory requirement to indicate disagreement with the hearing officer's decision.

The claimant was English-speaking and was assisted by an ombudsman at the CCH. Her treating doctor, Dr. S, certified that she reached MMI on April 2, 1993, with a 19% impairment. When a dispute was made, Dr. B was appointed as designated doctor by the Commission. He certified the same date of MMI with a 10% impairment rating, noting that claimant's range of motion (ROM) testing was invalidated.

Claimant's reasons for challenging Dr. B's impairment rating at the hearing were that she did not believe she had reached MMI, and she said Dr. B had forced her to move her legs during ROM testing rather than let her move herself. During cross- examination, she agreed that after the benefit review conference she had returned for a second test at the office of Dr. B and that ROM testing allowing her to move without assistance was performed by a female assistant of Dr. B.

Dr. S filed a written response to Dr. B's report explaining why he believed his assessment to be more accurate. These opinions were both before the hearing officer, who is charged under the statute with being the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The report of a Commission appointed designated doctor is given presumptive weight. TEX. LAB. CODE ANN. Sections 408.122(b), 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. 92166, decided June 8, 1992. The decision of the hearing officer is supported by the record in this case, and we do not find reversible error.

While a minimally sufficient appeal has not been filed we have reviewed the record. We agree with the carrier that a copy of the pamphlet that is signed and copied to the Commission does not tell us, as the law requires, how or why a claimant disagrees with the hearing officer. Section 410.202(c) states that a request for appeal "must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought." We have generally held that a simple written statement from an unrepresented claimant that he or she thinks the hearing officer was wrong and does not agree will be interpreted as a challenge to the sufficiency of the evidence. But even the minimal filings we have accepted as appeals indicate disagreement with what the hearing officer decided. Section 410.302 states that a court may only review issues on which the Appeals Panel has issued a decision. Section 410.204 provides that the Appeals Panel considers those issues on which review was requested. In this case, a copy was not mailed to the carrier, and the pamphlet was returned with the certificate completed showing service to DK, who signs the cover letter that goes with the hearing decision. Nothing else is written on the pamphlet or envelope. It is not clear if it was intended to be an appeal or simply a signed receipt for the decision. The law does not require the Commission to speculate and guess about what portions of the decision are disputed, or whether they have even been disputed.

We have determined that a certificate of service mailed to the Commission, with nothing more, is inadequate as an appeal. Texas Workers' Compensation Commission Appeal No. 93998, decided December 14, 1993. In our opinion, this is substantially similar to those facts, and we consequently hold that claimant did not adequately state the grounds upon which review was requested nor indicate disagreement with any portion of that decision.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Lynda H. Nesenholtz
Appeals Judge