APPEAL NO. 950165

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 18, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) reached maximum medical improvement (MMI) on July 1, 1993, with an impairment rating (IR) of 11%, as found by the designated doctor. Claimant asserts that the determination as to IR is against the great weight of the medical evidence and should be 26%, emphasizing that the designated doctor overlooked objective evidence of post-traumatic concussion syndrome. Respondent (carrier) replies that the designated doctor examined the claimant and the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (construction employer) when he fell on (date of injury). Claimant did not testify at the hearing. His fall was described in the medical records of (Dr. D), who was examining claimant's knee on February 25, 1991, as being from "scaffolding about four to five feet." Dr. D stated that something gave way when claimant stepped on it and "he ended up getting hung up in the cross bars of scaffolding itself hitting his head and neck on the wall and catching his arms . . . both legs were bent up into a valgus type position." On June 26, 1991, (Dr. L), claimant's neurologist, stated that claimant fell (apparently from the third to the second floor) onto a catwalk. As he fell, Dr. L said that his legs bent beneath him and "he hit his left shoulder against the wall." Then on March 15, 1994, Dr. L, in a letter to the designated doctor, (Dr. C), represented that claimant had fallen "17 feet to the ground."

Dr. L began treating claimant no later than June 26, 1991, and continued to do so to the time of the hearing. On June 26, 1991, he listed his impressions of claimant as: 1. cervical and lumbar strain; 2. contusion of the right shoulder; 3. bilateral knee strain; and 4. occipital neuralgia. He found claimant to be at MMI on July 1, 1993, with 34% IR. (This date of MMI was also used by Dr. C, and neither party disputed it at the hearing.) Dr. L's impressions in the narrative that accompanied his report of MMI and IR were: 1. cervical pain syndrome; 2. herniated lumbar discs, multiple; 3. herniated thoracic disc; 4. lumbar stenosis; 5. contusion of the shoulder; 6. knee sprain; and 7. post-concussion syndrome. His IR included 15% from "page 97, 4.1a The brain. Disturbance of complex, integrated cerebral functions," which is contained in the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association.

Dr. C was appointed as the designated doctor, and he examined claimant on December 31, 1993, finding that MMI had occurred on July 1, 1993, with 11% IR, comprised of four percent for the knee and seven percent for the lumbar spine. Claimant

did not take issue with Dr. C's amounts for the lumbar spine and the knee and did not assert that amounts Dr. L had assigned for the cervical and thoracic spine should be part of the IR determined by the hearing officer. Claimant does assert that the 15% Dr. L assigned for a disturbance of "complex, integrated cerebral function" should be included in the IR.

Dr. C, in his report of December 31, 1993, pointed out that he considered whether there was any neurologic deficit in claimant, finding no anatomic sensory or strength deficits. He alluded to Dr. L's IR based on disturbance of "complex integrated cerebral functions" and stated, "I did not find evidence of this on my examination." Claimant's thrust in presenting his evidence was that Dr. C did not do any neurologic testing of claimant. In its reply to the appeal, carrier pointed out that Dr. C did examine claimant's eyes as part of "HEENT", noted that "cranial nerves intact and normal", and said that claimant was "well-oriented." These comments may take on more meaning to a layman based on the testimony of the claimant's neurological rehabilitation nurse, (Ms. V).

Ms. V testified that she saw no evidence in Dr. C's report that he examined claimant for disturbance of "complex integrated cerebral functions"; she then was asked and answered the following question:

Q.Okay. And what specifically would you have expected him to say in here that would convince you that he did do an examination?

A."The patient is oriented to time, place, person, event." There would be documentation of examination of pupils, fundoscopic examination of the eyes, cranial nerve testing. I'm just talking about the brain. I'm not getting into the back or anything.

Ms. V then also mentioned pin prick tests and hearing tests. (Dr. C's comments under "HEENT" also included that "Ears . . . were normal," although he did not specifically mention "hearing." Ms. V also testified that the nerves involved are cranial nerves, not cervical nerves. From Ms. V's testimony and Dr. C's general comment about "his examination" and his other comments about "HEENT", "well-oriented", "cranial nerves intact and normal", and "ears . . . normal", the hearing officer would be supported by sufficient evidence in concluding that Dr. C's evaluation for IR was adequate. *See* Texas Workers' Compensation Commission Appeal No. 941297, decided November 8, 1994.

Ms. V also stated, in reply to questions concerning the objective criteria for claimant's condition, that a CT scan may not show an abnormality; Ms. V agreed that "psychological testing", such as "MMPI", "are accepted tests that diagnose clinical objective signs of postconcussive syndrome" (see Dr. L's No. 7 impression in his 1993 determination of MMI). Ms. V referred to Dr. L's neurological examination on Page 47 of claimant's exhibit 1, along with Dr. L's "cumulative ongoing" treatment as substantiation for the 15% IR Dr. L gave claimant. Ms. V later referred to Dr. L's testing of claimant as being shown on pages 46 through 48 of claimant's exhibit 1. Pages 46 to 48 of claimant's exhibit

1 reflect the examination Dr. L did on June 26, 1991. The MMPI test Ms. V earlier indicated as indicative of postconcussive syndrome was dated October 1, 1991, and was re-administered on May 12, 1992, approximately 13 and one-half months prior to Dr. L's determination of MMI on July 1, 1993.

Section 408.123 states, in part, "after an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating. . . ." This section lends support to a hearing officer's choice of an IR that evaluated a claimant's condition at the time of MMI, rather than finding that other medical evidence, based on an examination two years old and on other testing over a year old, comprised the great weight of medical evidence as compared to the IR of the designated doctor. (*See* Section 408.125 which gives presumptive weight to the opinion of the designated doctor as to an amount of IR.) In addition, Ms. V, referred to MMPI testing (in 1991 and 1992), reflected on pages 62-69 of claimant's exhibit 1, as showing postconcussion syndrome; Ms. V could not refer to any entry in any medical record in which claimant was diagnosed as having had a concussion. Ms. V also acknowledged that medical records referred to claimant as having "experienced symptom magnification," although Ms. V said that such was not inconsistent with the results of the MMPI testing.

There were no other IRs contained in the record, although various other doctors either tested or cared for claimant. As stated, the objective testing which claimant said Dr. C ignored, was not shown to have been conducted in proximity to the determination of MMI. Dr. C's report indicates his consideration and review of testing performed by other physicians and psychologists and shows that he considered claimant's orientation, cranial nerves, and eyes at the time of his examination in assigning no IR for a disturbance of "complex, integrated cerebral functions."

Finding that the decision and order set forth at the conclusion of the hearing officer's opinion are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We note that Section 408.021 provides that medical care for a compensable injury continues "when needed" without any criteria limiting it to the period prior to MMI.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge