

APPEAL NO. 950220

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer on November 22, 1994. The record was again opened to obtain clarification from (Dr. V), the designated doctor, and was closed on January 13, 1995, after the parties were afforded the opportunity to comment on the information obtained from Dr. V. The hearing officer determined that the claimant reached maximum medical improvement (MMI) on July 31, 1993, with a 10% impairment rating (IR) as certified by Dr. V in his amended report. The appellant (claimant) appealed the determinations of the hearing officer apparently on the sufficiency of the evidence. The respondent (carrier) urges that the evidence is sufficient to support the determinations of the hearing officer.

DECISION

We affirm.

The claimant testified that he injured his back on (date of injury), when he and a coworker were lifting a heavy piece of machinery. He said that he was sent to a company doctor who referred him to (Dr. RS), a neurosurgeon. Dr. RS performed left hemilaminotomy and discectomy at the L4-L5 level on May 11, 1992. The claimant testified that he had physical therapy, but that it did not help him. The claimant said that he was referred to (Dr. MH), a chiropractor, and (Dr. RH), a pain specialist. He said that Dr. RH was a pain specialist and told him that he could not do anything for him. He said that he does not remember much about the visit with Dr. V because of the pills he was taking and the injections he was given. He testified that he has pain in his waist and is not back at work. On cross-examination he said that he has not improved since he was operated on.

The claimant introduced medical records from (Dr. JS), an orthopedic surgeon; Dr. RH, Dr. MH, and (Dr. MB), a urologist. In a letter dated April 7, 1992, Dr. JS concurred with the need for spinal surgery and recommended lumbosacral spine fusion in addition to a lumbar laminectomy. The record contains eleven reports from Dr. RH covering the period from January 7, 1993, to June 28, 1993. Dr. RH reported that he prescribed medication, prescribed the use of a TENS unit, and administered injections, but that the claimant still reported low back pain and right leg pain. In a progress report dated June 28, 1993, Dr. RH wrote:

I am going to send him back to see [Dr. RS]. I certainly think he has reached [MMI] but the patient does not. He absolutely refuses anything less than perfect results and will not go back to work unless he has that. He wants to see a urologist and. . . .

In a Report of Medical Evaluation (TWCC-69) dated July 22, 1994, Dr. MH reported that the claimant reached MMI on the previous date of February 4, 1994, with a 15% IR consisting

of 10% for a specific injury under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and five percent for loss of range of motion (ROM). He stated that even though the claimant still has symptoms, he has reached MMI. Reports from Dr. MB reflect that he saw the claimant from November 6, 1992, through May 10, 1994, for sexual dysfunction following back injury and back surgery and that the problem has been treated but not resolved.

The carrier introduced medical records from Dr. RS, a TWCC-69 from (Dr. BB), a letter from the Texas Workers' Compensation Commission (Commission) appointing Dr. V as the Commission-selected designated doctor, and a TWCC-69 and other medical records from Dr. V. In a TWCC-69 Dr. RS certified that the claimant reached MMI on September 23, 1992, with a 13% IR. On January 17, 1994, Dr. RS reported:

[Claimant's] MRI scan shows no evidence of any recurrent disc. He still complains of pain in his back and he comes back to the subject of sex. He says that when he has sex, he has back pain four or five days afterwards. I cannot explain this. I do not find anything wrong with this man. I really see no reason why he cannot return to his usual job. I told him that I had nothing to offer him as far as his back was concerned. I think that he has reached MMI.

In a TWCC-69 dated April 8, 1994, Dr. BB reported that the claimant reached MMI on February 4, 1994, with a 15% IR. In a letter attached to the TWCC-69, Dr. BB reported that he assigned 10% for a specific disorder under Table 49 of the AMA Guides and six percent for loss of ROM which results in an IR of 15% under the combined values chart. Dr. BB went on to state that the claimant reached MMI by operation of law and he believes that the claimant's IR will not change in the future.

In a letter dated April 1, 1993, Dr. V was appointed the Commission-selected designated doctor. In a TWCC-69 dated April 12, 1993, Dr. V reported that the claimant had not reached MMI and suggested treatment in a pain management program which would include physical restoration activities followed by work hardening activities. On July 7, 1993, in another TWCC-69, Dr. V again reported that the claimant had not reached MMI, that Dr. V had reviewed medical records from Dr. RH and Dr. MB, that he estimated that the claimant would reach MMI in six to eight weeks after completing a pain management program, and that it was premature to issue an IR. In a TWCC-69 dated June 14, 1994, Dr. V reported that a pain management program was not conducted, that he does not believe that a chronic pain management program would help the claimant, and that as a result he determined that the claimant reached MMI on July 31, 1993. He certified that the claimant reached MMI on July 31, 1993, with a 10% IR. Dr. V assigned a 10% IR for a specific disorder, surgically treated disc lesion with residual symptoms at one level, reported that ROM measurements were invalid, and reported that there was no evidence of neurological damage. At the request of the hearing officer, Dr. V again reviewed medical records from Dr. MB, reported that he did not receive additional information from Dr. MB

concerning the claimant's erectile dysfunction, performed additional ROM tests that he again reported as invalid, and issued another TWCC-69 dated December 20, 1994, in which he again certified that the claimant reached MMI on July 31, 1993, with a 10% IR. The doctors assigning an IR agree on 10% for a specific disorder. Dr. V invalidated the ROM tests on two separate examinations and did not include loss of ROM when he assigned an IR.

Disputes involving medical evidence are not uncommon. The 1989 Act sets forth a mechanism to help resolve conflicts concerning MMI and IR by according presumptive weight to the report of a doctor referred to as the designated doctor. Texas Workers' Compensation Commission Appeal No. 92495, decided October 28, 1992. If the Commission selects the designated doctor as was done in this case, the Commission shall base its determination of whether the claimant has reached MMI and the claimant's IR on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. Section 408.122(b) and Section 408.125(e). We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. No other doctor's report is accorded the special presumptive status given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366 decided September 10, 1992. The hearing officer resolves conflicts in expert evidence and assesses the weight to be given to expert evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer determined that the report of Dr. V dated December 20, 1994, was made in accordance with the AMA Guides and is entitled to presumptive weight; that the great weight of the other medical evidence is not contrary to the report of Dr. V; and that the claimant reached MMI on July 31, 1993, with a 10% IR. Only were we to conclude, which we do not in this case, that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb her determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The Decision and Order of the hearing officer is affirmed.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge