APPEAL NO. 950242

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, on January 17, 1995, (hearing officer) presiding as hearing officer. On the only issue before her, she determined that the appellant's (claimant) impairment rating (IR) was 12% as determined by a Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appeals urging that "[t]he hearing officer erred in finding that [the designated doctor's] opinion as to maximum medical improvement [MMI], impairment and pain was not overcome by the great weight of contrary evidence." The respondent (carrier) posits that the hearing officer's decision is correct.

DECISION

The decision and order of the hearing officer are affirmed.

As indicated, the only issue at this contested case hearing was the impairment rating (IR) of the claimant. He sustained a back injury on (date of injury), while driving a bulldozer. Conservative treatment did not resolve his injury and he underwent back surgery on November 4, 1991. Although he realized relief from the surgery, his back problems worsened and he continued with conservative treatment and therapy. Although there are medical notations in the record indicating the possibility of some future surgery, no surgery has been scheduled and the claimant testified that "I haven't really been diagnosed to have another surgery." He also stated that he did not feel he was getting better, rather was getting worse and that he thought he would probably have to have surgery.

MMI was not an issue before the hearing officer and she observed in her decision that it was evident that the claimant had reached MMI by operation of the law. Section 401.011(30) provides that MMI is reached, if not earlier, on the expiration of 104 weeks from the date on which income benefits begin to accrue. An exhibit in the record is a June 24, 1993, letter from the Commission's disability determination officer (DDO) to the claimant, with copies to the carrier and claimant's attorney, which states that the Commission has been notified of a dispute over MMI and/or an IR and advising of the 10 day opportunity to agree on a designated doctor or that the Commission would select a designated doctor. Also in the record is a second letter from the DDO to the claimant dated July 14, 1993, with copies to the carrier, claimant's attorney, the claimant's treating doctor and the designated doctor, indicating an appointment for August 2, 1993, for the purpose of determining IR only. The claimant subsequently was examined by the designated doctor, (Dr. H). Dr. H rendered a Report of Medical Evaluation (TWCC-69), dated August 8, 1993 wherein he certified a 12% IR. The claimant complains that Dr. H only spent a few minutes with him and apparently feels that Dr. H did not review all the pertinent records or examine him thoroughly. Dr. H's report references the claimant's previous surgery, the medicinal treatment, his evaluation of muscle mass, motor-sensory function, straight leg raise and refers to the correct version of Guides to the Evaluation of Permanent Impairment, third

edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) that he used in rendering his rating.

The hearing officer found that Dr. H's certification of IR has not been overcome by the great weight of contrary medical evidence and accepted his 12% IR. While there is some indication that additional surgery might be called for in the future, there was no evidence that any surgery is scheduled or contemplated at this time, a factor specifically considered by the hearing officer. Such circumstance is not reason to disregard or deem as premature the IR by the designated doctor which occurred after statutory MMI was reached. *See generally* Texas Workers' Compensation Commission Appeal No. 93311, decided June 7, 1993. We find the evidence sufficient to support the determination of the hearing officer. Claimant also states that none of the treating doctors have assigned an IR and that there should not have been a designated doctor since there was no dispute. As set out above there is evidence in the record that the Commission was notified of a dispute as to MMI and/or IR perhaps, although not developed, because statutory MMI had passed. Further, appropriate notification was given by the Commission with an opportunity for the parties to agree on a doctor and an appointment was scheduled and kept by the claimant. We find no evidence or other basis to conclude that Dr. H was inappropriately appointed to render an IR on the claimant under these circumstances, particularly where statutory MMI has occurred. *See also* Texas Workers' Compensation Commission Appeal No. 93334, decided June 14, 1993, where we observed that the lack of some other doctor's determination of MMI or IR would not preclude the parties from agreeing to have a designated doctor appointed and the Commission appropriately appointing a designated doctor.

Accordingly, the decision and order of the hearing officer are affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge