APPEAL NO. 950342

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. On February 9, 1995, a contested case hearing was convened in (city), Texas, with (hearing officer) presiding. The issues were whether the appellant, (claimant), who is the claimant, had reached maximum medical improvement (MMI), and, if so, on what date, and the correct impairment rating (IR) to be assigned to him. The claimant injured himself on (date of injury), while employed by (employer).

The hearing officer found that claimant had reached MMI on May 6, 1994, and that claimant's IR was 14%, in accordance with the report of the designated doctor.

The claimant has appealed, arguing that he has not reached MMI but has gotten worse, and that none of the doctors in question considered that he injured his left shoulder and hand, along with his right shoulder and hand, on the day in question. The respondent, carrier herein, argues that the decision should be affirmed, and that there is no medical evidence to refute that claimant reached MMI on May 6, 1994. The carrier further argues that the designated doctor considered and evaluated claimant's left extremity along with his right.

DECISION

We affirm.

Claimant was employed as a door greeter by the employer, a retail outlet. Claimant stated that as he was pulling on some shopping carts that were jammed together, on (date of injury), he was pulled and jerked over the carts when another employee ran into them. Claimant stated that he injured both shoulders and hands and his neck, but agreed that his right extremity was the worse one. Claimant had carpal tunnel release surgery on his right hand and wrist, along with a shoulder operation, on December 29, 1993. He has also been treated with physical therapy and pain relief for his injury.

A TWCC-69 (Report of Medical Evaluation) was completed for claimant's injury by (Dr. C), on behalf of the carrier. Dr. C examined claimant and opined that he reached MMI on May 6, 1994, with an 11% IR. Dr. C assessed the IR for post-surgical neurological and range of motion (ROM) deficits to the right extremity. From the underlying measurement tables, it appears that Dr. C performed ROM measurements for both of claimant's shoulders, but only for his right arm and wrist. Claimant testified that his treating surgeon concurred with this report.

When claimant disputed this, the Texas Workers' Compensation Commission (Commission) appointed a designated doctor, (Dr. S). Dr. S certified MMI as of May 6, 1994, with a 14% IR. Claimant testified that at Dr. S's instruction, a young man took measurements of both of his extremities. Dr. S's report indicated that ROM testing was performed on both of claimant's shoulders and wrists. We believe it fairly summarizes her

report to say that she found impairment to the right extremity, but not the left, along with some IR for claimant's cervical spine.

The report of a Commission-appointed designated doctor is given presumptive weight. TEX. LAB. CODE ANN. § 408.122(b) and 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. We note that all doctors in this case who rendered IRs held that claimant reached MMI on May 6, 1994. We do not agree that Dr. S overlooked claimant's left arm and shoulder; she merely found that there was no lasting impairment, due to the compensable injury, for the left extremity. There is essentially no medical evidence to refute her conclusions.

"Maximum Medical Improvement" is defined, as pertinent to this case, as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated. . . ." TEX. LAB. CODE ANN. § 401.011(30)(A). The presence of pain is not, in and of itself, an indication that an employee has not reached MMI; a person who is assessed to have lasting impairment may indeed continue to experience pain as a result of an injury. *See* Texas Workers' Compensation Commission Appeal No. 93007, decided February 18, 1993.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The record in this case does not lead us to the conclusion that the hearing officer's determination has been clearly wrong, and the decision and order of the hearing officer are accordingly affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge