

## APPEAL NO. 92494

On August 24, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer found that the claimant had reached maximum medical improvement (MMI) on April 15, 1992 and is no longer entitled to temporary income benefits (TIBS). The hearing officer also ordered that the designated doctor retest the claimant for cervical spine range of motion retests until valid results are obtained for that testing segment and then assign claimant a whole person impairment rating based on the retest findings. (carrier), carrier herein, appealed asserting that the hearing officer has no authority to order retests of the claimant "until valid results are obtained." The carrier requests that the hearing officer's order requiring retesting by the designated doctor for cervical spine range of motion be vacated and the whole person impairment rating of four percent assigned to claimant be rendered by the Appeals Panel. The carrier agrees with the MMI date of April 15, 1992. No response was filed to the carrier's request for review.

### DECISION

The hearing officer's decision is affirmed in part and reversed and rendered in part.

The facts of this case are uncontested. (claimant), the claimant, was employed by (employer), the employer herein on (date of injury), when claimant sustained an injury to her neck and back within the course and scope of her employment. In March 1992 the Texas Workers' Compensation Commission (Commission) designated (Dr. D) to determine if and when MMI had been reached. (Dr. D) rendered a comprehensive written report on April 15, 1992 finding that MMI had been reached on April 15, 1992 and assigning four percent impairment rating of the whole body. (Dr. D) opined that claimant was depressed which seemed to limit her functional abilities. He was also unable to measure range of motion because claimant fell outside of the validity requirement in the measurements on three tries on two separate days. The doctor noted in his report that claimant ". . . has obvious symptom magnification by exam and multiple inconsistencies by exam."

At the contested case hearing, claimant testified briefly that she had not yet been released by her treating physician and submitted a physical therapy report. The physical therapy report dated August 20, 1992 agreed "with (Dr. D') basic assessment of the patient." The physical therapist does note ". . . the patient did strain the credibility of the test by going a full six trials. . . ." Carrier submitted and stood on (Dr. D') report. The hearing officer, obviously concerned about the designated doctor's inability to measure range of motion, ordered "[t]he designated doctor should retest claimant for cervical spine range of motion until valid results are obtained for that testing segment and should then assign claimant a whole person impairment rating based upon his findings." It is unclear whether the hearing officer contemplated any definitive time frame for the doctor to obtain a valid range of motion measurement, if one could be obtained at all. Both the designated doctor and the physical therapist reports submitted by claimant hint that claimant's complaints may be exaggerated.

Article 8308-4.26(g) provides in pertinent part as follows:

If the impairment rating is disputed, the commission shall direct the employee to be examined by a designated doctor selected by the mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor selected by the commission. . . . If the commission selects a designated doctor, the report of the designated doctor shall have presumptive weight and the commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary, in which case the commission shall adopt the impairment rating of one of the other doctors.

Because (Dr. D) is the Commission designated doctor pursuant to Article 8308-4.26(g), his report has presumptive weight and will be the basis of the impairment rating unless the great weight of the other medical evidence is to the contrary. See Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. In this case there is virtually no evidence to the contrary in that the physical therapist's report is in essential agreement with that of the designated doctor. Hence, (Dr. D)' four percent impairment rating was entitled to presumptive weight. See Texas Workers' Compensation Commission Appeal No. 92126, decided May 7, 1992.

The hearing officer was obviously concerned that the range of motion measurements of the cervical spine fell outside the validity criteria. Conversely, the carrier argues that the designated doctor considered the CAT scan of the cervical spine, an MRI of the cervical spine and a C-spine film, and consequently the doctor did consider cervical spine range of motion in arriving at the impairment rating. The issue then is whether an impairment rating can be assigned in the absence of a range of motion test which fell within the validity criteria. The American Medical Association Guides to the Evaluation of Permanent Impairment, Third Edition, page 71, states "[m]easurements may be repeated up to six times until consecutive measurements fall within this guideline. However, if inconsistency persists, the measurements are invalid and that portion of the examination is then disqualified." It would therefore appear that the guidelines take into consideration the possibility of continued inconsistency and directs that portion of the examination not be used. Nowhere does it suggest that a cervical spine range of motion test, within the validity requirements, is necessary before a doctor can make an impairment rating of the whole body.

The hearing officer erred in requiring retests of claimant for cervical spine range of motion until valid results are obtained for that testing segment. It may be that there would never be tests within the validity criteria given the doctor's opinion that there is "obvious symptom magnification."

(Dr. D) filed a comprehensive report indicating the results of various tests. His findings have gone virtually unchallenged. As noted previously, the report of (Dr. D), as the Commission designated doctor, has presumptive weight and the Commission shall base the

impairment rating on that report unless the great weight of the other medical evidence is to the contrary. In this case there is no medical evidence to the contrary, and therefore the designated doctor's impairment rating should be accepted.

There is a slight inconsistency in the doctor's report in that it states "[a]ll C-spine AROM tests fell outside of validity criteria +/- 5 percent." The AMA guides, *supra*, state "[t]he examiner must take at least three consecutive mobility measurements, which must fall within +/- 10% or 5° (whichever is greater) of each other to be considered consistent." Although not entirely clear, the report apparently meant +/- 5 degrees (rather than percent as stated.) However, as discussed previously, even without a validated range of motion test, the report and disability rating is entitled to presumptive weight given the absence of any evidence to the contrary.

The decision of the hearing officer is affirmed as to the portion of the order holding the claimant reached MMI on April 15, 1992 and is therefore no longer entitled to TIBS.

The decision of the hearing officer is reversed as to the portion of the order requiring claimant to be retested for cervical spine range of motion until valid test results are obtained. We render a new decision that the claimant, (claimant), sustained a whole person impairment rating of four percent as assigned by the designated doctor.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Lynda H. Nesenholtz  
Appeals Judge