

APPEAL NO. 93195

On January 22, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The sole issue was the determination of a correct impairment rating.

The hearing officer found that the respondent (claimant) had reached maximum medical improvement (MMI) on June 8, 1992, with a 27% whole body impairment rating. The hearing officer based this finding upon the opinion of the designated doctor appointed by the Texas Workers' Compensation Commission (Commission), Dr. A, an orthopedic surgeon. The hearing officer found that in assigning the 27% whole body impairment rating, the designated doctor complied with the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides) as required by Article 8308-4.24, TEX. REV. CIV. STAT. ANN. (Vernon Supp. 1993) (1989 Act). The hearing officer also concluded that the impairment rating assessed by the designated doctor was not contrary to the great weight of the other medical evidence.

The appellant (carrier) contends that the hearing officer erred in basing her finding of impairment on the opinion of the designated doctor. Carrier propounds two lines of argument to support this contention. First, carrier submits that the designated doctor failed to properly apply the AMA Guides, in determining claimant's physical impairment. Second, carrier argues that the great weight of the medical evidence was contrary to the determination of designated doctor in regard to impairment. Carrier then argues that the impairment rating of the treating doctor was also erroneous in that the treating doctor, H, an orthopedic surgeon, also failed to properly apply the AMA Guides and in fact did not use the appropriate version of the AMA Guides. Carrier then concludes that the only valid impairment rating in evidence was that of Dr. K, carrier's choice of doctor, and asserts that the hearing officer should have adopted Dr. K's opinion in determining the claimant's impairment rating.

In his response to carrier's request for appeal, claimant states that the hearing officer determined that the 27% impairment rating rendered by the designated doctor was in compliance with Article 8308-4.24 of the 1989 Act and with Tex. W.C. Comm'n 28 TEX. ADMIN. CODE §§ 130.1 and 130.2 (Rules 130.1 and 130.2). Claimant further contends that the determination of impairment by the designated doctor was not contrary to the great weight of the medical evidence in this case.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

At the hearing, the parties stipulated that on (date of injury), the claimant had suffered a compensable injury in the course and scope of his employment with Farah, Inc. (employer). The parties further stipulated that on the date of injury employer had workers' compensation coverage through carrier and that Claimant lived within 75 miles of the

Commission. The hearing officer took official notice of the Act, and all rules promulgated thereunder as well as the AMA Guides.

Evidence was submitted at the hearing that Dr. H, claimant's treating doctor, had assigned an impairment rating of 27% as a result of claimant's injury of (date of injury). Evidence was also submitted that Dr.K, carrier's choice of doctor, had assessed claimant's impairment at 7%. The evidence showed that Dr. A, the Commission selected designated doctor, had rated the Claimant's impairment at 27%. Additionally, a report from Dr. H H, a physician with Health Benefit Management, Inc., disputing the impairment rating by Dr. H, was offered by the carrier and admitted into evidence. Dr. H states that Dr. H, in assessing his 27% impairment rating, had assigned 4% impairment due to electromyographic impairment and that "[t]he Guides do not allow for any additional impairment due to electromyographic impairment because this is considered to be part of impairments due to specific disorders of the spine." Dr. H then expresses the opinion that claimant "has a 22% impairment of the whole body, rather than the 27% assigned by Dr. H."

After the hearing, the record was held open pending the receipt of a letter of clarification from the designated doctor. The hearing officer sent the designated doctor a letter dated February 2, 1993, wherein she requested clarification of his rating asking him as follows:

In assessing the 27% whole body impairment rating for Mr. B, you assigned 4% for the EMG abnormality. Could you tell me how you arrived at that 4%? In other words, once the EMG indicated that here [sic] was an abnormality, what other neurological or sensory tests, if any, did you use to assess Mr. Bs impairment? And how did the results of these tests, if any, lead to the 4% rating?

Dr. A responded with a letter dated February 5, 1993, wherein he stated even though there were no obvious abnormalities detected on the clinical neurologic examination of claimant's lower extremities, "a person can have some subtle neurologic damage which can only be registered by electromyogram means and would not show up as an abnormality on the gross clinical testing." Dr. A goes on to explain that the electromyogram had shown subtle nerve damage to the sciatic nerve root, which would translate to a 4% impairment of both lower extremities which then translate under the AMA Guides to a 4% whole person impairment.

Article 8308-6.34(e) provides that the contested hearing officer, as the fact finder, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given the evidence. Texas Workers' Compensation Commission Appeal No. 92255, decided August 3, 1992; Texas Workers' Compensation Commission Appeal No. 92641, decided January 4, 1993. As finder of fact, the hearing officer resolves conflicts in the testimony and in the evidence. Burelsmith v. Liberty Mutual Insurance

Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston 1984, no writ).

In the present case, there was a conflict as to the impairment of the claimant. This conflict was decided by the hearing officer basing her decision on the opinion of the Commission selected designated doctor. We cannot find on this record that this determination was against the great weight of the other medical evidence in this case.

The carrier makes a detailed and well-reasoned argument that the designated doctor failed to properly apply the AMA Guides and presents medical evidence in the form of the written statement of Dr. Hg's report, stating that assignment of additional impairment due to the electromyographic impairment violates the AMA Guides. However, the designated doctor in both his deposition on written questions and in his letter to the hearing officer dated February 5, 1993, states he applied the AMA Guides in reaching his determination. Whether or not, the AMA Guides were properly applied in this case hinges on resolving this conflict in medical testimony. We do not find the resolution determined by the hearing officer to be against the great weight of the other medical evidence in this case, particularly in light of the presumptive weight to be given the opinion of the designated doctor under Article 8308-4.25(b).

The present case is clearly distinguishable from our decision in Texas Workers' Compensation Commission Appeal No. 92611, decided December 30, 1992, wherein we stated:

It is our specific holding, in this case, that where there is a challenge regarding the designated doctor's rating and where the challenge specifically attacks how the rating was determined using the AMA Guides, the designated doctor should provide some information how the impairment rating was arrived at, particularly when the treating doctor specifies measurements, AMA Guides and tables used.

However, in the present case Dr. A's letter of February 5, 1992, provides a detailed explanation how he arrived at his rating.

Consequently, we affirm the decision of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge