

APPEAL NO. 93275

On March 9, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The issue at the hearing was: What is the claimant's correct impairment rating? Based on the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission), the hearing officer determined that the claimant reached maximum medical improvement (MMI) on December 22, 1992, with a seven percent whole body impairment rating, and further determined that the claimant is entitled to impairment income benefits for 21 weeks. The appellant, who is the claimant, disputes the hearing officer's decision. The respondent, who is the carrier, responds that the hearing officer's decision is supported by the evidence.

DECISION

The decision of the hearing officer is affirmed.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury. According to the history of the injury the claimant gave to his treating doctor, Dr. P, the claimant injured his lower back while removing dampers from air conditioners. Dr. P's diagnosis was "post traumatic lumbar spondylogenic (ruptured disc) discogenic pain syndrome," and the claimant underwent four months of physical therapy at his direction. In a Report of Medical Evaluation (TWCC-69) dated September 22, 1992, Dr. P certified that the claimant reached MMI on September 22, 1992, with a 23 percent whole body impairment rating. Article 8308-4.24 provides that the Commission shall use the second printing, dated February, 1989, of the Guides to the Evaluation of Permanent Impairment, third edition, published by the American Medical Association for the determination of the existence and degree of an employee's impairment. In a deposition on written questions, Dr. P indicated that in assigning the claimant an impairment rating, he used the AMA Guidelines that had been printed in 1988, rather than the edition of the AMA Guidelines required by Article 8308-4.24.

At the carrier's request the claimant was examined by Dr. H, on September 29, 1992. In a TWCC-69 dated October 7, 1992, Dr. H certified that the claimant reached MMI on September 29, 1992, with no whole body impairment. The Commission selected Dr. O, as the designated doctor and he evaluated the claimant on December 22, 1992. In a TWCC-69 dated December 22, 1992, Dr. O certified that the claimant reached MMI on December 22, 1992, with a seven percent whole body impairment rating. In a deposition on written questions, Dr. O indicated that he used the AMA Guidelines required by Article 8308-4.24 in assigning the claimant an impairment rating. Drs. P, H, and O all specialize in orthopaedic surgery.

Pursuant to Article 8308-4.26(g), if the Commission selects a designated doctor, as the Commission did in this case, the report of the designated doctor has presumptive weight and the Commission must base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. The hearing officer determined that the

claimant reached MMI on December 22, 1992, with a seven percent whole body impairment rating as assigned by Dr. O, the designated doctor, and further determined that the great weight of the other medical evidence is not contrary to the report of the designated doctor. Having reviewed the record, we conclude that the hearing officer's decision is supported by the evidence and is in accordance with the applicable law. See Texas Workers' Compensation Commission Appeal No. 92365, decided September 1, 1992.

On appeal, the claimant suggests that Dr. O is not impartial. The claimant did not assert this at the hearing nor is there any evidence to support such an assertion. The claimant also contends that the hearing officer did not review the medical records she introduced into evidence. We disagree. The hearing officer's decision reflects a correct determination of the issue presented based on the evidence presented at the hearing. The claimant further contends that Dr. O did not perform a professional examination. Again we disagree because Dr. O's four page narrative report dated December 22, 1992, indicates that physical examination with range of motion testing was performed by Dr. O and that he reviewed the claimant's medical records and reports, physical therapy reports, and test results, including magnetic resonance imaging studies. The claimant attached several documents to her appeal, most of which were in evidence at the hearing. Two documents which were not in evidence at the hearing relate to another employee's claim and are not relevant to the issue of the claimant's impairment rating. The Appeals Panel reviews the record developed at the contested case hearing. Article 8308-6.42(a).

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge