

APPEAL NO. 93600

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01-11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held in (city), Texas on June 17, 1993, before hearing officer (hearing officer). The appellant, hereinafter carrier, appeals the hearing officer's decision and order adopting the impairment rating assigned by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission), arguing that it was not rendered in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, Third Edition, Second Printing (AMA Guides). No response was filed by the claimant.

DECISION

Because of the need to develop the record further with regard to the designated doctor's report, we reverse the decision of the hearing officer and remand for the expedited development of this additional evidence.

The compensability of claimant's injury, which occurred when he lifted a case of cans on (date of injury), was not an issue. The claimant, who has lost no time from work due to his injury, has been treating with (Dr. C), who certified that claimant reached maximum medical improvement (MMI) on January 8, 1992, with a five percent impairment rating. (The parties stipulated at the hearing that claimant's date of MMI was January 8, 1992). Because the carrier disputed Dr. C's impairment rating, the Commission appointed (Dr. A) as designated doctor. Dr. A filed a Report of Medical Evaluation (Form TWCC-69) certifying claimant had reached MMI on February 25, 1993, with a 14% impairment rating. The claimant testified that Dr. A examined him for about 15 minutes, and that he repeated the tests two or three times.

The hearing officer found that the great weight of the other medical evidence was not contrary to Dr. A's report, and accordingly determined that claimant's correct whole body impairment rating was 14%.

The carrier argued at the hearing, and alleges as error on appeal, that Dr. A's impairment rating was not in accordance with the AMA Guides as required by the 1989 Act, Article 8308-4.24.

Specifically objected to by the carrier was Dr. A's assessment of nine percent impairment for range of motion. Carrier cites Table 56 of Chapter 3 of the Guides, Impairment Due to Abnormal Motion of the Lumbosacral Region - Flexion/Extension, as stating that it is to be used "only if the sum of hip flexion plus hip extension angles is within 10 degrees of the straight leg raising angle on tightest side--the validity criterion." However, it argues, Dr. A's TWCC-69 finds claimant's sacral flexion to be 66 degrees, with sacral extension four degrees, with a total sacral range of motion for claimant of 60 degrees. While carrier surmises that this is a typographical or mathematical error, it says the error leads to an invalid and improper report. (The carrier notes another obvious typographical

error in the report, which states that claimant is 5 feet 0 inches; claimant testified at the hearing that he is six feet tall.)

Carrier further states that claimant's straight leg raising test on the right side was positive at 54 degrees, while the same test on the left side was positive at 49 degrees. Using Table 56, the sum of hip flexion and extension angles (70 degrees) exceeds the straight leg raising angle on the tightest side (49 degrees) by 21 degrees; therefore, carrier argues, under the validity criterion noted above this is an invalid test and must be disqualified. The carrier says that if range of motion testing is invalidated, the result will be five percent impairment due to the specific injury--the same impairment rating given by Dr. C.

We find that the carrier raises sufficient questions with regard to the designated doctor's determination of range of motion as to require clarification by that doctor. We have previously held that a designated doctor is effectively the agent of the Commission, and have cited with approval a hearing officer's attempt to clarify questions arising from a designated doctor's report which become evident at the contested case hearing. See Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. We note too that Articles 8308-6.34(b) and (g) mandate the hearing officer to fully develop the facts required for the determinations to be made. See generally, Texas Workers' Compensation Commission Appeal No. 93588, decided August 24, 1993. We accordingly reverse the decision below and remand to allow the hearing officer to seek clarification from Dr. A as to whether and to what extent his numbers on range of motion may be inaccurate due to either a mathematical, typographical, or other error, to explain how his hip flexion and extension angles were within 10 degrees of the straight leg raising angle on the tightest side, pursuant to Table 56, Chapter 3, of the Guides, and for any other information or explanation which the hearing officer finds to be relevant.

We stress that we are not, by this opinion, retreating from previous decisions concerning the special, presumptive status accorded a designated doctor's report, and the unique position that such report occupies under the Texas Workers' Compensation system. See, e.g., Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. However, the carrier herein has timely and cogently raised a question which only the designated doctor can answer or clarify.

A final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas

Workers' Compensation Commission's division of hearings, pursuant to Article 8308-6.41.
See Texas Workers' Compensation Appeal No. 92642, decided January 20, 1993.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge