

## APPEAL NO. 93681

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S art. 8308-1.01 *et seq.*), a contested case hearing was held in (city), Texas, on July 7, 1993, (hearing officer) presiding as hearing officer. He determined, pursuant to a report of a Commission designated doctor, that the appellant (claimant) reached maximum medical improvement (MMI) on October 23, 1992, with a zero percent whole body impairment rating (IR). Claimant appeals urging that the IR rendered is against the great weight of medical evidence and that the designated doctor did not follow the Guides to the American Medical Association Evaluation of Permanent Impairment, Third Edition (AMA Guides) in rendering his rating. Respondent (carrier) counters that the designated doctor's detailed report, and his subsequent responses to Commission generated questions, is entitled to presumptive weight and that there is no medical evidence in the record to show that the designated doctor misapplied the AMA Guide or failed to make findings consistent with the AMA Guides.

### DECISION

Finding sufficient evidence of records to support the hearing officer's findings and conclusions, the decision is affirmed.

The issues at the contested case hearing were whether the claimant had reached MMI, if so, the date and the IR. As indicated, the hearing officer found MMI on October 23, 1992, and this issue is not on appeal. The hearing officer found that the designated doctor's report was not contrary to the great weight of other medical evidence (Section 408.125(e)) and determined that the claimant had a zero percent IR.

The claimant sustained an uncontested compensable back injury in April 1992. He was treated by a (Dr. P) who apparently (reference to this is made in the designated doctor's report) certified MMI to be on October 23, 1992, with a four percent IR. The claimant was subsequently seen by a Commission designated doctor, (Dr. O), who certified MMI to be on October 23, 1992, with a zero percent IR. As a part of his comprehensive report, he considered a congenital "scoliosis in the thoracic region" (for which there is no medical or other evidence to show it was a result of or an aggravation of any compensable injury) and invalidated range of motion (ROM) measurements because of "significant variances." A part of the report is a diagnosis notation of "psychogenic overlay with symptom magnification." As a result of a request from the Commission, Dr. O repeated the lumbar and cervical ROM studies and in a letter dated May 21, 1993, again found the ROM studies "invalid due to minimal effort."

At the contested case hearing (and apparently at the earlier benefit review conference), the claimant complained that the designated doctor did not comport with the AMA Guides in assessing his injury under the table of specific disorders, did not properly weigh the scoliosis and failed to get a valid ROM finding. A letter was sent to the designated doctor asking if he had taken a cervical bulge and the scoliosis into consideration in his

rating, and to provide his assessment of the new ROM study. Dr. O's reply addressed the questions, indicated he did consider the cervical bulge and scoliosis, explained his reasoning and methodology, and again certified that the correct IR was zero percent. No other medical evidence was offered by the claimant or considered by the hearing officer and he determined the designated doctor's report was not contrary to the great weight of other medical evidence. We are in agreement and find no merit to the assertions of the claimant on appeal. The report of the designated doctor does comply with the AMA Guides and sufficiently explains the basis for the ratings. It was entitled to presumptive weight consideration under the circumstances. As we have stated in past decisions, the designated doctor occupies an important and "unique position" under the 1989 Act (Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992; Texas Workers' Compensation Commission Appeal No. 92686, decided February 3, 1993) and that only if the great weight of medical evidence is contrary to the designated doctor's report can it be discarded. See Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992.

The claimant argues that the AMA Guides do not allow for an abnormal ROM "to be ignored due to lack of consistency; the Guides requires retesting until a consistent and valid [ROM] study is obtained." We have previously noted that with regard to ROM studies, the AMA Guides set forth procedures and tests to calculate variability and provide for reproducibility guidelines and that ROM measurements can be rendered invalid if they fall outside the parameters. Texas Workers' Compensation Commission Appeal No. 92335, decided August 28, 1992. And, we recently stated that the "AMA Guides themselves contemplate the invalidation of ROM tests on certain grounds, as a safeguard to ensure the tests' reliability." Texas Workers' Commission Appeal No. 93676, decided September 17, 1993. See *also* Texas Workers' Compensation Commission Appeal No. 93296, decided May 28, 1993. In Texas Workers' Compensation Commission Appeal No. 93674, decided September 17, 1993, we observed that "[w]hile the [AMA Guides] provide that [ROM] testing may be invalid, as reported by the designated doctor, the hearing officer is not precluded from inquiring into the feasibility of re-examination "at a later date" when ROM values cannot be obtained on a particular examination; see paragraph 3.3a A.4, page 72, of the Guides." This latter provision provides that where testing remains inconsistent, "consider the test invalid and re-examine at a later date." We have not and do not read, as posited by the claimant, this provision of the AMA Guides to mandate that an impairment rating involving ROM can never be rendered until, if ever, a valid ROM can be determined regardless how many re-exams may be required or how far into the indefinite future the process may extend. In that regard, in Texas Workers' Compensation Commission Appeal No. 92494, decided October 29, 1992, we specifically rejected this notion and stated "[t]he hearing officer erred in requiring retests of claimant for cervical spine [ROM] 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." In the case before us, there was a re-examination and the ROM studies were again determined to be invalid

by the designated doctor. Given these circumstances, we find no merit to this assertion of error.

The evidence being sufficient to support the findings and conclusions of the hearing officer, the decision is affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Susan M. Kelley  
Appeals Judge