APPEAL NO. 93787

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 23, 1993, in (city), Texas, with the record being closed on August 17th. The appellant, hereinafter claimant, appeals hearing officer (hearing officer) determination that claimant had a 10% whole body impairment rating, as found by the designated doctor. The claimant contends that the designated doctor failed to examine her, did not use the correct version of the American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA Guides), and made no reference to claimant's activities of daily living. She asks that this panel find impairment consistent with the report of the treating doctor or, in the alternative, order the appointment of another designated doctor. The respondent, carrier, urges that the hearing officer's decision be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The claimant, an employee of (employer), was injured on (date of injury), when a computer room floor gave way and she fell through, striking her head, shoulder, neck, back, and knee. Her treating doctor was (Dr. D). Among other things, Dr. D referred her to (Dr. S), who performed surgery on claimant's knee on July 2, 1991. Claimant said that at carrier's request she also saw another doctor, (Dr. Sa), for orthopedic evaluation of her back. On October 15, 1991, Dr. Sa recommended claimant have a bone scan, which was reported as normal on October 17th; he also noted a September 1991 MRI of the lumbar spine which revealed loss of signal with degenerative disc disorder at L3-4, but which was otherwise an essentially normal exam.

The record shows that on May 22, 1992, the claimant disputed Dr. S's determination, dated February 28, 1992, that he anticipated claimant to reach MMI on (date of injury). On June 9th a Commission disability determination officer signed an order requiring claimant to be examined by (Dr. O) "to determine maximum medical improvement." The words "Designated Doctor" were written at the top of the form which contained the order; however, neither party at the hearing referred to Dr. O as a designated doctor nor explained why a subsequent designated doctor was apparently appointed. Dr. O issued a Report of Medical Evaluation (Form TWCC-69) certifying claimant as having reached MMI on August 28, 1992, with the words "no comment" written in the space for the impairment rating. In a letter to the Commission dated August 28th, Dr. O stated he would give an impairment rating at a later date if requested to do so.

Claimant contended that Dr. O issued an impairment rating after the carrier refused to pay the bill for his examination. In an October 3, 1992, letter to the Commission Dr. O stated that he had reviewed the claimant for impairment rating, pursuant to Commission request, and had assigned a nine percent whole body impairment. He explained that this was based upon five percent for claimant's lumbar spine (per Table 49 of the AMA Guides) and four

percent for her knee (per Table 36); he stated that claimant's strength and range of motion tests had to be invalidated on several grounds.

On September 4, 1992, Dr. D determined that claimant reached MMI as of that date, with a 17% impairment rating. Dr. D stated that this rating included impairment to her lower back and knee, and an additional five percent due to the "interference with activities of daily living." On September 22nd the carrier completed a Form TWCC-21 (Payment of Compensation or Notice of Refused/Disputed Claim) stating that it disputed Dr. D's 17% rating and that it would pay impairment income benefits based on its assessment of nine percent. Claimant stated her belief that Dr. O's later assignment of nine percent impairment was due to carrier's payment of benefits based on that percentage.

Apparently in February of 1993 the Commission appointed (Dr. M) as designated doctor to examine the claimant. (At the hearing neither party contested the appointment of this doctor.) On February 19, 1993, Dr. M found claimant to have reached MMI as of "10/92" with a 10% impairment rating based upon five percent each for claimant's right knee and lumbar spine. Dr. M filed two reports with regard to claimant. The first, dated February 17th, summarized the results of claimant's examination and reviewed claimant's medical reports; the second, dated February 18th, stated that claimant's evaluation was performed using the AMA Guides, "Revised Third Edition."

The hearing officer's statement of the evidence says that the parties agreed at a prior benefit review conference that the claimant reached MMI on September 4, 1992. After briefly summarizing the medical reports in evidence, the hearing officer found that Dr. M was the designated doctor, that he certified a 10% whole body impairment, that he used the correct version of the AMA Guides in assessing impairment, and that the presumptive weight accorded the findings of the designated doctor were not overcome by the other medical evidence.

The claimant's first point of error on appeal was that her physical testing and examination was done not by Dr. M but by a person whom claimant presumed was a physical therapist, in contravention of Texas Workers' Compensation Commission Advisory No. 93-04, which states that "an evaluation or certification under the 'Guides' and the Act must include a physical examination and evaluation by the doctor" (emphasis in original).

We find no error in the hearing officer's acceptance of Dr. M's report in the face of the foregoing argument. This panel has previously found to be invalid the report of a designated doctor who did not physically examine a claimant, *see* Texas Workers' Compensation Commission Appeal No. 93095, decided July 8, 1993; Texas Workers' Compensation Commission Appeal No. 93766, decided October 11, 1993. The facts of this case are distinguishable from those, however, in which the claimants' unrebutted testimony was that there was no examination by the designated doctor. While the claimant in this case stated

that Dr. M "personally did not give me a physical examination," she nevertheless testified that he asked her to walk on her toes and to bend over, and that he talked with her for around 10 or 15 minutes prior to referring her to an assistant who took measurements. We do not find this evidence to demonstrate that Dr. M failed to examine the claimant. As we stated in Appeal No. 93095, *supra*,

> Clearly . . . a designated doctor can appropriately consider and rely on tests, exams, data, medical reports, etc. performed by others in arriving at his evaluation in a given case. Of course, when he does so he places his
>
> imprimatur on such sources and in considering them either adopts, rejects or distinguishes them for his own evaluation purposes. However, as part of the very important process of certifying MMI and impairment ratings, a designated doctor must himself also examine the injured party and not just review records and totally rely on examinations by others. (Citations omitted)

Claimant's second point of error was that Dr. M did not use the correct version of the AMA Guides, and that he made no reference to the effect claimant's injuries had upon her activities of daily living, as had her treating doctor. Because claimant had raised the question concerning use of the statutorily-prescribed version of the AMA Guides, see Section 408.124, the hearing officer contacted Dr. G in order to clarify this issue. In a June 29, 1993, letter, which was made part of the record as a hearing officer exhibit, Dr. M responded as follows: "Thank you for bringing the issue of the AMA Guides to my attention. I have now re-evaluated my impairment rating utilizing the 3rd Edition, 1989 printing, which the (sic) acknowledged 'authoritative' edition accepted by the Texas Legislature. There is no change in the numerical ratings supplied in my letter or on the TWCC 69 form." The hearing officer clearly believed that Dr. M's subsequent letter was sufficient to base a determination that the designated doctor used the correct version of the AMA Guides; we, too, find that this evidence was sufficient and that there was no error in the hearing officer's finding of fact. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992.

With regard to the last issue, claimant references the glossary section (Appendix A) of the AMA Guides (which was in evidence at the hearing) which defines terms, including "activities of daily living," which are related to impairment as distinguished from the concept of disability. However, this material states that it defines terms "that are used in the Guides, and definitions of other terms related to impairment and disability evaluations that may be of interest to the reader, although they are not mentioned in the Guides;" it does not mandate that a doctor assign an impairment rating for a back and knee injury due to activities of daily living. Further, we note that Dr. M addressed some of claimant's current conditions that are listed in Appendix A as activities of daily living, including walking, climbing stairs, lifting, sleep disturbance, and bowel and bladder functions. In short, our review of Dr. M's report does not indicate any deficiencies that would cause us to reverse the hearing officer's determination

that the presumptive weight of such report was not overcome by the other medical evidence. *See* Section 408.125(e); Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992.

The decision of the hearing officer is affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge