

APPEAL NO. 93837

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S. Article 8308-1.01 *et seq.*), a contested case hearing was conducted by (hearing officer) in (city), Texas, on May 28, 1993, and although not entirely clear from the record was apparently informally reopened on two occasions and finally closed on August 5, 1993. The hearing officer determined that the appellant's (claimant) correct impairment rating (IR) was 12% as ultimately assessed by the designated doctor. Claimant appeals urging that the correct IR was the one rendered by his treating doctor in the amount of 16%. There was no response filed by the respondent (carrier).

DECISION

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

The sole issue in this case was the claimant's correct IR. A compensable cervical spinal injury sustained by the claimant on (date of injury), was not disputed. The claimant had seen several doctors and was recommended for surgery. Being reluctant to undergo surgery, he went to see a (Dr. P) who became his treating doctor and treated him conservatively. Dr. P determined that the claimant reached maximum medical improvement on October 9, 1992, with a 16% IR which included ratings for a specific disorder (herniated nucleus pulposus), range of motion (ROM) abnormalities, and neurological impairment for loss of sensation. The impairment rating was disputed by the carrier and the Commission subsequently appointed a designated doctor, (Dr. K), who rendered a report dated February 15th assessing a six percent whole body IR based upon a specific disorder under Table 49 of the Guides to the Evaluation of Permanent Impairment, Third Edition, 1989, American Medical Association (AMA Guides). Although his report indicated ROM abnormalities, he did not assess any IR for this. After closing the hearing on May 28, 1993, the hearing officer caused the record to be opened for the purpose of having Dr. K give his rationale or explanation for not including areas involving neurological and ROM in his assessment. This was done by letter, with attachments, dated June 8, 1993, copies of which were sent to the claimant and carrier's attorney. Dr. K responded in a letter dated June 22, 1993, which indicated he determined the ROM measurement to be invalid and that the neurological deficits were less than one percent and which carries a zero percent impairment. Dr. K stated in the letter that the claimant could be rescheduled on another day and the ROM could be checked and that he "would be happy to re-evaluate this patient for the range of motion of the cervical spine. . . to determine if there is any impairment of the cervical range of motion." It can not be determined from the record whether this letter from Dr. K was sent to either party or that they were given an opportunity to comment or respond. We caution against this type of summary procedure where complete documentation is not included in the file since it can result in reversible error. See Texas Workers' Compensation Commission Appeal No. 93028, decided February 26, 1993. However, that issue is not on appeal. In any event, the claimant was apparently scheduled for an appointment with Dr. K by someone as the next exhibit in the record is a Report of Medical Evaluation TWCC-69 from Dr. K dated "08-03-93" which assesses an IR of 12%

including six percent for abnormal cervical motion on flexion.

We have held that a designated doctor may amend a Report of Medical Evaluation for proper reason. Texas Workers' Compensation Commission Appeal No. 93207, decided May 3, 1993; Texas Workers' Compensation Commission Appeal No. 92503, decided October 29, 1992; Texas Workers' Compensation Commission Appeal No. 92441, decided October 8, 1992. And, a recheck of ROM measurements where an initial test is determined to be invalid as outside validation criteria is, in our opinion, a proper reason. Indeed, a recheck or reexamination is contemplated and specifically mentioned in the AMA Guides in evaluating spinal ROM abnormalities. See Para. 3.3a, General Principles of Measurement, AMA Guides. We have stated that a hearing officer should seek to resolve deficiencies in a designated doctor's report when it is feasible and can be accomplished without undue delay. Texas Workers' Compensation Commission Appeal No. 92595, decided December 21, 1992. And we commend the action taken in this case to clarify and initiate a recheck or reexamination of ROM where it appeared ROM abnormalities were detected but were not initially determined to be within validation criteria. See Texas Workers' Compensation Commission Appeal No. 93681, decided September 20, 1993. The designated doctor recognized this and offered to perform a recheck or reexamination and found valid ROM abnormalities and rendered appropriate impairment ratings. We only wonder why appropriate inquiries were not undertaken or accomplished, as they should have been, at an earlier stage of the dispute resolution process.

We have reviewed the record of the original May 28, 1993, hearing and the exhibits considered by the hearing officer and, although we have expressed our concern with the abbreviated procedures used in the two incompletely documented reopenings of the record but noting such matter has not been appealed, find sufficient evidence to sustain the decision. We adhere to our consistent recognition that the report of a Commission-appointed designated doctor is given presumptive weight (Section 4.08.125(e)) and that it takes more than a mere balancing of the evidence or preponderance of evidence to overcome it. Texas Workers' Compensation Commission Appeal No. 92142, decided September 28, 1992. Moreover, medical evidence and not just lay testimony is needed to overcome the presumption accorded the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992. Here, the hearing officer considered the medical evidence before him on the issue of IR including the report of IR given the claimant by his treating doctor and determined that "the rating of 12% given by (Dr. K) is entitled to presumptive weight and is not against the great weight of the other medical evidence." Only were we to determine, which we do not, that his findings and conclusions were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb his decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge