

APPEAL NO. 94056

This case returns for review, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), following this panel's decision in Texas Workers' Compensation Commission Appeal No. 93600, decided August 31, 1993. In that decision, we reversed the decision of the hearing officer due to the need to develop the record further with regard to the designated doctor's report, and remanded for the development of additional evidence clarifying that doctor's measurement of claimant's range of motion. On remand, the hearing officer, (hearing officer), convened a hearing on October 15, 1993, in which he indicated that a letter requesting clarification would be sent to the designated doctor, copy to the parties, and that the parties would be given a chance to respond. The letter, dated October 8, 1993, and the doctor's response, dated October 25th, were furnished to the parties and made part of the record. The only response was a November 18, 1993 letter from carrier's attorney stating disagreement with the designated doctor's response.

In his decision, the hearing officer noted the designated doctor's response that he had corrected a typographical error in his original report, but that the claimant's lumbar range of motion impairment of nine percent was valid. The hearing officer accordingly accepted the designated doctor's impairment rating of 14% (which also included 5% for claimant's specific injury). In its appeal the carrier again contends that the designated doctor's findings on range of motion were not made in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989 (AMA Guides), and asks that this panel reverse the hearing officer and adopt the five percent impairment rating of claimant's treating doctor. The claimant did not file a response.

DECISION

Because we determine that that portion of the designated doctor's amended report which assigns an impairment rating for claimant's lumbar range of motion does not comply with validity criteria of the AMA Guides, we reverse the hearing officer's decision and render a new decision that the claimant's impairment rating is five percent.

Due to the limited nature of the issue on appeal, it is not necessary to this decision to discuss any of the other facts in this case.

(Dr. A), the designated doctor appointed by the Texas Workers' Compensation Commission (Commission), completed a Report of Medical Evaluation (Form TWCC-69) finding that the claimant reached maximum medical improvement (MMI) on February 25, 1993, with a 14% impairment rating, nine percent of which was attributable to lumbar range of motion restrictions. Among other things, Dr. A's accompanying report stated that claimant's sacral flexion was 66 degrees and extension was four degrees, for a total sacral range of motion of 60 degrees. It also said that his straight leg raising was 54 degrees on the right and 49 degrees on the left.

In its original appeal the carrier cited Table 56 of the AMA Guides, which contains

impairment percentages due to abnormal motion of the lumbo-sacral region, flexion/extension, as stating that such table 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." While conceding that Dr. A's report might have contained a typographical error, the carrier stated that the apparent sum of claimant's hip flexion and extension, 70 degrees, exceeds the straight leg raising (SLR) angle on the tightest side (49 degrees) by 21 degrees; therefore, it argued, this was an invalid test and claimant's impairment rating should be five percent due to the specific injury. (Five percent was also the impairment rating awarded by claimant's treating doctor.)

In his October 25th response to the hearing officer's inquiry Dr. A stated that the "within ten degrees" language quoted above misstates the requirements of the AMA Guides and that page 91, paragraph 4 states that "if the straight leg raising exceeds total sacral (hip) motion by more than 10 degrees, the test is invalid and should be repeated." He also noted that page 77, Figure 83c (lumbar range of motion) of the AMA Guides contains the same validation requirement.

Dr. A went on to state:

This patients [sic] lumbar range of motion test was valid under the criteria stated above. His sacral flexion is 56 degrees. Sacral extension is 4 degrees. Total sacral range of motion is 60 degrees. Tightest straight leg raising on the right is 54 degrees and on the left is 49 degrees. Therefore, the patient's straight leg raising test does not exceed the sum of sacral flexion and extension and therefore his lumbar range of motion test is valid. As you pointed out, there is a typographical error, sacral flexion is not 66 degrees it is 56 degrees. The lumbar range of motion test in this case was valid in accordance with the publication outlined above, which I believe is the correct addition [sic].

Dr. A enclosed with his letter a corrected copy of the narrative that accompanied his TWCC-69; where the report formerly quantified sacral flexion as "66 degrees," in the corrected version the "66" was marked out and another number was handwritten in. It is somewhat difficult to read, and carrier contends it says "52."

In his decision the hearing officer found that the AMA Guides (with regard to the spine) contain the following references to straight leg raising test validity criteria:

1. Page 77, Figure 83c, straight leg raising, right and straight leg raising, left;
2. Page 89, Paragraph 3.3e, flexion and extension abnormal motion;
3. Page 91, measurement of lumbosacral spine flexion/extension using single inclinometer method (subparagraph 4); and
4. Page 91, Table 56, instructions under Impairment Due to Abnormal Motion of the

Lumbosacral Region - Flexion/Extension.

He further found that the first three references use the word "exceeds" (10 degrees)¹ while the fourth uses the words "is within" (10 degrees) to refer to the relationship of the hip flexion and extension angles to the SLR angle on the tightest side.

The hearing officer went on to make additional Findings of Fact as follows:

FINDINGS OF FACT

9. The designated doctor's 10-18-93 clarifying report and his corrected (as to the typographical error) original report interpret the applicable provisions of the Guides concerning straight leg raising to intend to use or use the word "exceeds" in evaluation of the comparison of the relationship of Claimant's straight leg raising angle on the tightest side to the sum of his sacral flexion and extension.
10. The designated doctor's 10-18-93 clarifying report and his handwritten correction of the sacral flexion figure on his original report reflect that the sacral flexion figure is actually 56 degrees (instead of the typographical error of 66 degrees or carrier's interpretation of the handwritten figure to be 52 degrees).
11. Claimant's lumbar range of motion testing was valid because the tightest straight leg raise did not exceed the sum of the sacral flexion and extension by 10 degrees.
12. Even if the handwritten sacral flexion correction figure in the designated doctor's amended report was 52 degrees as contended by carrier's attorney, the range of motion tests would still be valid because the tightest straight leg raise still does not exceed the sum of sacral flexion and extension by 10 degrees.
13. The great weight of the other medical evidence is not contrary to the reports (as corrected) of the designated doctor that find claimant's impairment rating to be 14%.

At the outset, we hold that the evidence supports the hearing officer's determination that the handwritten correction on Dr. A's report was "56" rather than "52." Dr. A's letter twice refers to the corrected figure as 56; in addition, if the report were read to give a sacral flexion measurement of 52, then the rest of the report, along with the figures given in Dr. A's accompanying letter, would be conflicting and inconsistent.

¹Figure 83c actually says "if tightest SLR ROM exceeds sum of sacral flexion and extension by more than 10%, Lumbar ROM test is invalid" (emphasis added).

The carrier contends in this appeal that Dr. A's assessment of claimant's range of motion is still invalid under Table 56 of the AMA Guides, which states "[u]se 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." The carrier states that claimant's range of motion is invalid because the sum of hip flexion and extension angles (60 degrees) exceeds the straight leg raising angle on the tightest side (49 degrees) by 11 degrees.

Based upon our review of Dr. A's letter and the pertinent provisions of the AMA Guides, we are compelled to accept the carrier's argument. The AMA Guides, Chapter 3.3e (Impairments Due to Range of Motion Abnormalities--Lumbosacral Region), provides that an additional "effort factor" is available to check lumbar spine flexion. "This is particularly useful because perceived lumbar flexion is actually a compound movement of both the lumbar spine and the hips (measured at the sacrum), in which hip flexion normally accounts for at least 50% of total flexion. A comparison of hip flexion to straight leg raising on the tightest side offers a validation measure independent of reproducibility." Reading together the provisions of Chapter 3 cited by the hearing officer, it appears that the Guides have determined that lumbar spine measurements are valid if the sum of hip flexion and extension is within 10 degrees of the tightest straight leg raising angle--and, conversely, that the measurement is invalid if those two measurements are not within 10 degrees of each other (in other words, if the SLR measurement exceeds flexion and extension by 10 degrees). Dr. A's letter is apparently based upon his opinion that the straight leg raising angle must be larger than the sum of flexion + extension. However, despite Dr. A's opinion as to validity, his letter, along with his amended report, show that there is more than a 10 degree variation between the two values in question.

We accordingly reverse the hearing officer's decision insofar as it accepts Dr. A's impairment rating of 14% based upon the validity of the range of motion measurements. Because the 1989 Act provides that the Appeals Panel may not remand a case more than once, Section 410.203(c), we accordingly render a decision that claimant's correct impairment rating is five percent.

The decision and order of the hearing officer are reversed insofar as the decision provides that claimant has a 14% impairment rating, and a new decision rendered that claimant's impairment rating is five percent.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge