

APPEAL NO. 94131

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (city) Texas, on December 29, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant's (claimant) impairment rating was seven percent as determined by the designated doctor. Claimant appeals urging that the impairment rating of 17% of his treating doctor is more convincing as it is more professional and more accurate because of the use of computerized machines which the designated doctor did not use. The respondent (carrier) urges that the designated doctor reviewed and considered the findings of the treating doctor, personally examined the claimant and used the correct standards and that the great weight of the other medical evidence does not outweigh the presumptive weight of the designated doctor's report.

DECISION

Although we find error in the report of the designated doctor, there is an otherwise sufficient basis to uphold his certification of impairment rating. Accordingly, the decision of the hearing officer is affirmed.

The only issue at this hearing concerned the determination of the claimant's correct impairment rating. The matter boiled down to a difference in the assessment of an impairment rating for range of motion (ROM). The claimant's treating doctor assessed 11% impairment for ROM and the designated doctor, who states in his report that he performed his own ROM testing, determined ROM to be invalid and assessed zero percent. It is clear that there was significant disagreement between the two doctors on the various ROM measurements each accomplished. This is a conflict in the evidence which the hearing officer has the responsibility and authority to resolve. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We consistently adhere to the statutory provisions that the designated doctor's report is entitled to presumptive weight and can only be overcome by the great weight of other medical evidence (Section 408.125(e); Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992); however, we observe that it is apparent that the designated doctor made an erroneous application of the American Medical Association Guides to the Evaluation of Permanent Impairment Third Edition, Second Printing, February 1989 (AMA Guides) in part of his assessment rationale although it is not fatal under the circumstances. In his report, the designated doctor in invalidating any impairment rating for ROM stated:

Range of motion testing was performed by me today. The patient met the criteria for 3 consecutive measurements within 5 degrees or 10% of each other but he did not meet the straight leg raise criteria which states that the titer [sic] straight leg raise range of motion exceed sum [sic] sacra [sic] flexion and extension by more that 10%, lumbar range f [sic] motion test is invalid. Patient's titer [sic] straight leg raise was 16 degrees and the most liberal sum of sacral flexion and extension with [sic] 13 degrees. He also had a negative

sitting root test in the context of supine straight leg raises that range from 16 to 24 degrees. Because of these discrepancies, I am obligated to invalidate his lumbar range of motion test.

The treating doctor found different measurements than the designated doctor and disagrees with his invalidation of ROM indicating. While it is clear that the designated doctor conducted his own measurements and was fully within his professional charter to evaluate the results, the law requires that the AMA Guides specifically be used in rendering impairment ratings. Section 408.124. Under the AMA Guides in measuring lumbar ROM, the straight leg raising (SLR) is compared to the total sacral motion and if the SLR exceeds the total sacral motion by more than 10 degrees the test is invalid. This was not the case here according to the figures set forth in the designated doctor's report. However, the designated doctor refers to his invalidity determination being predicated on the SLR exceeding the sacral motion by more than 10 percent. Unfortunately, the working form (figure 83c) appears to be inconsistent with the written text of the AMA Guides by indicating that the excess of SLR to sacral motion for validity purposes is 10 percent instead of 10 degrees. Although the designated doctor's assessment is initially premised on an erroneous comparison factor, his second test, namely the sitting root test invalidated the ROM test. He specifically determined that the sitting root test was negative in the context of supine straight leg raises that ranged from 16 to 24 degrees. Because of these discrepancies, he invalidated the claimant's lumbar ROM test. The hearing officer stated that it was the results of this later test upon which he determined that the designated doctor's impairment rating of seven percent was not overcome by the great weight of the other medical evidence. As we have stated, the designated doctor occupies a unique position under the 1989 Act and his opinion is entitled to presumptive weight. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. The hearing officer's determination being supported by the evidence and not being so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust should be affirmed. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

Regarding the erroneous matter in the designated doctor's report, we emphasize the AMA Guides are mandated by the 1989 Act, they are of critical importance in assessing benefits due an injured workers, they must be carefully used by every evaluator to ensure as much objectivity and consistency as possible, and the methods, testing, calculation, and validity provisions of the AMA Guides must be followed and capable of verification upon review. If the impairment rating system is to have harmony, all evaluators must be playing from the same sheet of music. Here that is somewhat brought into question by the noted error and the disparate evaluations. We again emphasize the need for the Commission to have a solid designated doctor program which necessarily includes guidance and direction on the use of the very important AMA Guides. See Texas Workers' Compensation Commission Appeal No. 93105, decided March 26, 1993.

For the foregoing reasons, the decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge