

APPEAL NO. 94163

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 January 10, 1994, (hearing officer) presiding as hearing officer. He determined that the appellant's (claimant) whole body impairment rating (IR) was 11% as certified by the Texas Workers' Compensation Commission (Commission) designated doctor. Although urging at the hearing that he be awarded a 15% whole body IR as certified by his treating doctor, on appeal he asks that he be awarded a 22% whole body IR. Respondent (carrier) asks that the decision of the hearing officer be affirmed.

DECISION

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

The single issue in the case concerned the claimant's correct IR. He sustained a compensable back injury on (date of injury), and subsequently underwent back surgery on February 11, 1993. His surgeon and treating doctor certified maximum medical improvement on June 10, 1993, (a matter not in dispute) with a 15% whole body IR. A Commission designated doctor was subsequently appointed and rendered an IR of 11%. The claimant's treating doctor referred the claimant to another doctor who rendered an IR of 10% with "zero" being assessed for range of motion (ROM). According to the claimant, the designated doctor examined him for about four hours and did his own ROM measurements although his report also contains some laboratory measurements which conclude with a six percent impairment for ROM. A designated doctor may, but is not required to, accept reports and diagnostic test results from other health care providers. See Texas Workers' Compensation Commission Appeal No. 93095, decided March 19, 1993. The designated doctor specifically addresses the ROM matter and states:

On [ROM] testing, there was some restriction in lumbar flexion, lumbar right lateral flexion and lumbar left lateral flexion. Please look at [ROM] testing work sheet and [IR] for further details.

He was given total lumbar [ROM] impairment of 6%.

However, on my spine exam there was no lumbosacral spine tenderness and his lumbar flexion was possible to about 85 degrees bilaterally and straight leg raising was possible to well above 90 degrees bilateral without increased low back pain. Therefore, I will reduce his lumbar [ROM] impairment by 50%.

The designated doctor also assessed an eight percent IR based upon Table 49, Impairment Due to Specific Disorder, Item II, Sub-Item D, set out in the Guides to the Evaluation of Permanent Impairment, Third Edition, second printing, American Medical Association (AMA Guides). The designated doctor did not find residuals warranting an enhancement of the surgically treated disc lesion. Regarding ROM, Table 56 of the AMA

Guides supports an even greater reduction of the IR for abnormal motion of the lumbosacral region for the figures stated in the designated doctors narrative report. However, the three percent assessed is not disputed or appealed by the carrier.

Section 408.125(e) provides that the report of the designated doctor has presumptive weight and the IR is to be based upon his report "unless the great weight of the other medical evidence is to the contrary." The hearing officer found that not to be the case, and we find no sound basis to disturb his determination. Clearly, the three doctors rendering IRs did not fully agree although it appears, and is clear as to the designated doctor, that all were using and following the correct AMA Guides. The report of the designated doctor is comprehensive and is not overcome by the great weight of the other medical evidence. Accordingly, it was appropriately accepted and found to be valid by the hearing officer in assessing the correct whole body IR. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. The decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge