

## APPEAL NO. 961619

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 2, 1996. The issue at the CCH was what was the impairment rating (IR) of the appellant (claimant). The hearing officer determined that claimant's IR was 14% in accordance with the report of the designated doctor. On appeal, claimant contends that the great weight of the evidence is to the contrary and asserts that, because the claimant's cervical condition was part of the compensable injury, the designated doctor should have rated it. Carrier responds that sufficient evidence supports the hearing officer's determination regarding claimant's IR and requests affirmance.

### DECISION

We reverse and remand.

Claimant testified that she was injured on \_\_\_\_\_, when she was moving a cart at work. She said she injured her left hand, left arm, and neck. An MRI report dated March 23, 1995, states, "tiny focal posterocentral herniated disc suspected at the level of C5/6, and C6/7 but without evidence of cord compression." There was a dispute over claimant's IR and a designated doctor was appointed. The designated doctor reported that claimant had an IR of 14%. The record reflects that a disability determination officer (DDO) wrote to the designated doctor and asked him whether it would have been appropriate to include a rating for claimant's left hand and cervical area. In a letter of October 4, 1995, the designated doctor replied as follows:

[T]his patient was seen . . . for bilateral [CTS] and an injury to the right shoulder. I did not see any indication that would lead me to examine the neck on this patient. In reading the report from (Dr. A), I see that his diagnosis also was bilateral [CTS] and subacromial impingement of the shoulder. There was no clinical indication that would have called for examining the patient's neck. However, if you insist that the neck should be evaluated, I will [do so] . . . .

The parties did not make an opening statement, but there was closing argument about whether the neck was part of the injury and whether it should have been rated by the designated doctor. Extent of injury was not formally listed as an issue at the CCH and the hearing officer did not make a finding in that regard. In the "statement of the evidence" portion of the decision and order, the hearing officer stated:

[A] letter of clarification [was] sent to the designated doctor asking him if the left hand and cervical region should have been included in his assessment. [Dr. O] responded by stating that the claimant was evaluated for bilateral [CTS] and an injury to the right shoulder and that he "did not see any indication that would lead him to examine the

neck on this patient." The designated doctor's report is not contrary to the great weight of the other medical evidence.

\* \* \* \*

Claimant contends that the hearing officer erred in determining that her IR was 14%. She asserts that the designated doctor, Dr. O, improperly failed to rate her cervical condition.

An IR can be given only for impairment considered to be permanent. Sections 401.001(23), (24). If there is a dispute over extent of injury, this issue is for the hearing officer and not the designated doctor. Texas Workers' Compensation Commission Appeal No. 950018, decided February 17, 1995. The hearing officer is not to give presumptive weight to the designated doctor's report regarding extent of injury. *Id.*

In this case, the issue of extent of injury was raised but not resolved by the hearing officer. In the decision and order, the hearing officer appeared to state that he followed the designated doctor's opinion and believed the injury did not include the neck. However, the hearing officer should have determined this issue not from the designated doctor's report, but based on a preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 950330, decided April 17, 1995. Further, it is not clear whether the designated doctor believed that the injury extended to the neck or whether he was opining that there was no permanent impairment to the neck which he needed to rate. The hearing officer in this case should have resolved the extent of injury issue and then, if the entire compensable injury was not considered, asked the designated doctor to rate the injury again. Only then would it be proper to resolve the IR issue. Appeal No. 950330, *supra*. We remand this case to the hearing officer for resolution of this issue.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Judy L. Stephens  
Appeals Judge

CONCUR:

Thomas A. Knapp  
Appeals Judge

Alan Ernst  
Appeals Judge