

APPEAL NO. 990263

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case (CCH) hearing was held on September 14, 1998. In the first decision and order in this case, the hearing officer determined that the report of the designated doctor is contrary to the great weight of the other medical evidence and that the impairment rating (IR) of the respondent (claimant) is 19%, in accordance with the report of claimant's treating doctor. Appellant (carrier) appealed, contending that the hearing officer should have accorded presumptive weight to the designated doctor's report. The Appeals Panel reversed the hearing officer's decision and remanded the case for the hearing officer to seek clarification from the designated doctor regarding his use of Table 50 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). See Texas Workers' Compensation Commission Appeal No. 982413, decided November 25, 1998. The hearing officer did not hold a CCH on remand. In her decision and order on remand, the hearing officer again determined that the designated doctor improperly applied the AMA Guides and determined that claimant's IR is 19% in accordance with the treating doctor's report. Carrier again appealed, contending that the designated doctor properly used Table 50 in determining claimant's IR. Claimant did not respond to either appeal.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant's IR is 19%, in accordance with the report of the treating doctor, Dr. T. Carrier asserts that the hearing officer should have given presumptive weight to the designated doctor's report and the 13% IR he certified. Carrier asserts that the great weight of the other medical evidence was not contrary to the report of the designated doctor, noting that the designated doctor explained his use of Table 50. Carrier contends that whether Table 50 is appropriate involves a difference in medical opinion.

After remand, on December 4, 1998, the hearing officer wrote to the designated doctor and asked for clarification regarding his use of the AMA Guides. On December 8th, the designated doctor replied as follows:

You stated the debate continues as to whether my use of Table 50 was correct. Quite simply, [claimant] *does qualify for Table 50 values* because she does have limited hip mobility, as evidenced by both my two examinations and the [treating doctor's] examinations. I consider the 45 degree to 50 degree tightest SLR (hip angle) measured during my exam of [claimant] to be clinically limited. Most patients I test can present bilateral hip angles from 65 degrees to 90 degrees. There also is radiographic evidence of surgical ankylosis (fusion) in the lumbar area. . . . I feel it is clear that use

of Table 50 was appropriate and the [AMA Guides] have been applied properly for exactly the purpose Table 50 was created; not merely as a casual substitute for range of motion. [Emphasis in original.]

The applicable law and standard of review were stated in our prior decision and will not be repeated here. In the decision and order on remand, the hearing officer determined: (1) the designated doctor assigned claimant a 13% IR; (2) the designated doctor improperly used Table 50 in evaluating claimant's IR; (3) the designated doctor failed to properly use the AMA Guides after being asked to clarify his use of Table 50; (4) the IR assigned by the designated doctor is contrary to the great weight of the other medical evidence; (5) Dr. T, the treating doctor, properly evaluated claimant's impairment using Table 56 of the AMA Guides; (6) Dr. T certified a 19% IR; and (7) claimant's IR is 19%.

In his December 8, 1998, report, the designated doctor said that his use of Table 50 was proper because claimant had undergone lumbar fusion surgery. There is evidence that claimant underwent lumbar fusion surgery L1-2. However, in this earlier, December 5, 1997, report, the designated doctor had said that claimant had a normal gait and that he conducted ROM studies that were "invalid by the straight leg raise rule." The designated doctor said that "Table 50 will be applied in lieu of this particular study which would allow a three percent impairment for fusion of the two vertebral elements." In a June 19, 1998, report, the designated doctor said:

History of Injury. [Claimant] was interviewed previously Range of motion studies were partially invalid; therefore, Table 50 was used to award some impairment for invalid range of motion studies

* * *

Discussion of Impairment. Range of motion of the lumbar spine measured by myself, a medical doctor, using double inclinometry, revealed a *two percent* deficit, *however, Table 50 awards three percent* for fusion. [Italics added.]

Page 91 of the AMA Guides states, "[a]nkylosis in the lumbar spine has significance only if immobility occurs in both the hips and the lumbar spine region, so that that neutral position cannot be attained in the sagittal plane." The record supports the hearing officer's determination that doctors did not find that claimant had immobility in both the hips and lumbar spine region to the extent contemplated regarding the use of Table 50. The designated doctor's October 1997 report did not indicate that it was impossible to attain the neutral position in the sagittal plane. Further, the hearing officer could find from reading the designated doctor's reports as a whole that the designated doctor gave a rating for ankylosis to "make up for" invalid measurements of ROM. The hearing officer could find from the evidence that the designated doctor found that claimant's lumbar ROM was partially invalid, so he chose to award impairment under Table 50, instead of awarding the two percent impairment for loss of ROM that was valid. The Appeals Panel has stated that

a rating for ankylosis cannot be given to “make up for” invalid measurements of ROM. Texas Workers’ Compensation Commission Appeal No. 970202, decided March 24, 1997. The hearing officer could determine from the record that the reason the designated doctor chose to assess impairment under Table 50 is not because he found there is ankylosis in the lumbar/hip complex, but because part of claimant’s ROM testing was invalid. The hearing officer could and did determine that the designated doctor improperly applied the AMA Guides in this regard. Therefore, we perceive no error in the hearing officer’s determination that claimant’s IR is 19%, in accordance with the report of Dr. T, claimant’s treating doctor.

We affirm the hearing officer’s decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge