APPEAL NO. 990280

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 982495, decided December 14, 1998, the Appeals Panel affirmed findings of the hearing officer that the respondent (claimant) was not entitled to supplemental income benefits (SIBS) for the first through the sixth quarters; reversed a finding that the appellant (carrier) did not timely dispute first and second quarter SIBS entitlement and rendered a decision that the carrier did timely contest these entitlements; and affirmed the determination that the claimant had permanently lost entitlement to SIBS. We reversed the findings of the hearing officer that the report of the designated doctor, which certified an impairment rating (IR) of 18%, was contrary to the great weight of the other medical evidence and that the claimant's IR was zero percent. We remanded this issue with instructions to afford presumptive weight to the report of the designated doctor and to make specific findings of fact with detailed reasons why the hearing officer believed the great weight of the other medical evidence was contrary to the report of the designated doctor. No hearing was held or additional evidence taken on remand. The hearing officer, issued a new Decision and Order in which she found that the great weight of the other medical evidence was not contrary to the report of the designated doctor and that the claimant's correct IR was 18% as certified by Dr. T, the designated doctor. The carrier appeals this determination, contending that Dr. T's 18% IR was not in compliance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and contrary to the 1989 Act.[1] The appeals file contains no response from the claimant.

DECISION

Affirmed.

Significant details of this case are contained in Appeal No. 982495, *supra*, and need not be repeated here except as necessary to give context to this opinion. The claimant sustained a compensable low back and left ankle injury on _____. The carrier did not object to the assignment of a nine percent IR for the low back injury. The focus of this and the prior appeal was the assignment of a 10% whole body IR for the left ankle injury, diagnosed as a sprain, and Dr. T's use of the AMA Guides, particularly Table 33, to assign this IR.

Section 408.124 provides that an IR is to be determined using the AMA Guides. Impairment is defined as "any anatomic or functional abnormality or loss existing after [MMI] that results from a compensable injury and is reasonably presumed to be permanent." Section 401.011(23). An impairment rating is "the percentage of permanent impairment of the whole body resulting from a compensable injury." Section 401.011(24).

[1]Because the parties stipulated to the date of maximum medical improvement (MMI) at the initial contested case hearing (CCH), we assume this appeal is limited to the issue of correct IR.

Eligibility for impairment income benefits requires evidence of impairment based on an "objective clinical or laboratory finding." Section 408.122(a). An "objective clinical or laboratory finding" is defined as "a medical finding of impairment resulting from a compensable injury, based on competent objective medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee." Section 401.011(33).

It was the carrier's position throughout these proceedings that Dr. T did not base the 10% whole body IR for the left ankle on objective findings, but relied exclusively on the subjective complaints of the claimant. In a Report of Medical Evaluation (TWCC-69) signed by Dr. T on July 23, 1996, he commented that the claimant had an MRI (not in evidence) of her left ankle which showed a Grade III sprain. An arthrogram showed a calcaneal fibular tear and a partial tear of the deltoid ligament. The claimant underwent ankle surgery and reported to Dr. T that "the ankle is a lot more firm than it was before." Dr. T also noted that x-rays showed "some small fragmentations over the medial aspect of the ankle. There appears to be no instability as far as drawer or talar tilt at this time. The patient does not feel asymptomatic." Pursuant to Table 33 of the AMA Guides, Dr. T assigned a 25% IR of the left lower extremity for "ankle instability due to lateral collateral ligament loss."[2] Dr. T later commented that this "lateral ligament instability . . . takes precedency over the lower extremity range of motions [ROM]" which was why he did not enter ROM figures on his worksheet for this examination. He also commented in a January 28, 1998, letter in response to further inquiries from the Texas Workers' Compensation Commission (Commission) that:

> [T]he reason the impairment was done is due to the fact that the patient still has functional ankle instability due to lateral ligament loss. This is supported by both the MRI and the clinical examination. She did require surgery for debridement of the joint, but she still complains of symptoms of instability afterwards. It is for this reason that we assessed her the ankle instability due to lateral collateral ligament loss.

Mr. A, a licensed physician's assistant, testified at the CCH that Dr. T's clinical notes reflect an "intact and stable" collateral ligament. Mr. A reached this conclusion because the claimant underwent an operation to correct the instability and because Dr. T wrote that "[t]here appears to be no instability as far as drawer or talar tilt at this time." From these clinical findings and Dr. T's letter of January 28, 1998, Mr. A concluded that the only basis for the 10% whole body IR for the left ankle was the claimant's subjective complaints, and for this reason, the IR was not assigned in accordance with the AMA Guides.

Section 408.125(e) provides that the report of a designated doctor certifying an IR is to be given presumptive weight and the Commission shall base a claimant's IR on this report unless the great weight of the other medical evidence is to the contrary.

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[2] A 25% lower extremity IR converts to a 10% whole body IR. *See* AMA Guides, Table 42.

In her original decision and order, the hearing officer apparently accepted Mr. A's analysis/opinion and concluded that Dr. T found the left ankle stable but nonetheless improperly assigned an IR for left ankle instability based solely on the claimant's subjective complaints. The hearing officer then found the claimant's correct IR was zero percent as assigned by Dr. A, who found no permanent left ankle impairment. This decision we remanded for further findings of the evidence that she believed constituted the great weight of medical evidence contrary to Dr. T's report. In her decision and order on remand, the hearing officer then found, directly contrary to her first decision and order, that the great weight of the other medical evidence was not contrary to Dr. T's report and, in accordance with that report, that the claimant's correct IR was 18%.

The carrier appeals this determination, again arguing that Dr. T assigned a left ankle IR solely because of the subjective complaints of the claimant and argues that there was no instability of the ankle ligaments that would support an IR. Whether a designated doctor's report is against the great weight of the other medical evidence is a question of fact, the resolution of which is subject to reversal on appeal only if it, in turn, is against the great weight and preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. In this case, the report of Dr. T and his responses to Commission inquiries might appear inconsistent and suggest that his clinical examination showed no instability of the left ankle. However, Dr. T later clarified some of this by stating that he relied on an MRI, which was not in evidence, and that his clinical examination confirmed instability. He did not attempt to explain any possible inconsistencies in this later view from his earlier examination of the claimant. Ultimately, the hearing officer was the sole judge of the weight and credibility of the evidence, including Dr. T's various opinions. Section 410.165(a). In the discharge of her fact finding responsibility, she evaluated the seeming inconsistencies in Dr. T's opinions as to stability or instability of the ankle and concluded that his clinical examination found instability and that this finding was supported by an MRI. In reaching this interpretation of Dr. T's reports, she rejected Mr. A's opinion regarding the lack of evidence of ankle instability, or considered the distinction to be no more than a difference of opinion. Because the 1989 Act permits only one remand to a hearing officer, we cannot return this case for further consideration. Section 410.203(c). Although further clarification may be desirable, we conclude that the evidence is legally and factually sufficient to support the decision of the hearing officer on the issue of the claimant's correct IR.

For the foregoing reasons, we affirm the decision and order of the hearing officer on remand.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Tommy W. Lueders
Appeals Judge