APPEAL NO. 990360

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. 982333, decided November 6, 1998, the Appeals Panel affirmed the determination that the appellant (claimant) reached maximum medical improvement (MMI) on November 13, 1995, as certified by Dr. L, the designated doctor in this case, and reversed and remanded the determination that the claimant's impairment rating (IR) was four percent, as certified by Dr. L, for the further development of the evidence. A hearing on remand was held on December 28, 1998, at which additional evidence was taken. The hearing officer then determined the claimant's correct IR was zero percent as certified by Dr. L in a third, amended Report of Medical Evaluation (TWCC-69), which she signed on December 11, 1998. The claimant again appeals the determination of MMI and IR, contending essentially that Dr. L has not complied 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 that the decision is contrary to the great weight and preponderance of the evidence. The respondent replies that the claimant's appeal is untimely and that, in any event, the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

We find the claimant's appeal timely based on Texas Workers' Compensation Commission (Commission) records which reflect that the decision and order on remand was mailed to the parties on January 26, 1999, under a cover letter of January 22, 1999; a deemed date of receipt of the decision and order on February 1, 1999; the mailing of the appeal on February 16, 1998; and its receipt on February 21, 1999. *See* Section 410.202(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), Rule 102.3(a)(3), and Rule 102.5(h).

In Appeal No. 982333, *supra,* the Appeals Panel affirmed the hearing officer's determination of MMI for the reasons stated in that appeal. We decline to revisit that issue. In reversing the finding of IR based on the incorrect application of the AMA Guides, we directed that Dr. L be advised that, in arriving at an IR for the compensable injury of bilateral lunotriquetrial tear, "if she finds the measured ROM [range of motion] inconsistent with her clinical judgement, she may retest as appropriate, invalidate all ROM testing and award zero percent IR for ROM, or accept prior test results consistent with her clinical judgement." The hearing officer so advised Dr. L in a letter dated December 5, 1998. Dr. L reviewed the record of her previous examination of the claimant and concluded that the claimant did not provide a full effort on ROM, grip, or pinch strength testing. Motor and sensory examinations were normal. Rather than apportioning some IR for a speculative loss of ROM, Dr. L invalidated all ROM testing and assigned a zero percent whole person

IR in an amended TWCC-69 of December 11, 1998. which she provided the hearing officer in a letter dated December 10, 1998.

Meanwhile, the claimant was apparently referred by the Commission to Dr. C for an explanation of Dr. L's prior four percent IR, which led to this appeal. In a letter of September 22, 1998, to the claimant, Dr. C stated that the AMA Guides do not provide for the apportionment of ROM figures but stated that he believed that the claimant was entitled to some IR due to a specific disorder of "bilateral lunotriquetral tear in the wrist carpal area" which he further described as an "area of carpal instability." He did not suggest a specific IR. The claimant further relied on the discussion of carpal instability and Table 18 of Chapter 3, page 46, of the AMA Guides to support Dr. C's conclusion that she was entitled to some diagnosis-based IR. That paragraph states that carpal instability "patterns resulting from lunate . . . pathology can be classified as mild, moderate, or severe, based on the severity of radiographic findings." (Emphasis added.) Impairment values are provided in Table 18.

On remand, the hearing officer determined that the great weight of the other medical evidence was not contrary to Dr. L's zero percent IR and, therefore, that the claimant's correct IR was zero percent. In her appeal of this determination, the claimant argues that the arthrogram results, which show a lunotriquetrial tear, and Dr. C's opinion establish that Dr. L had not properly followed the AMA Guides. We disagree. Initially it should be noted that, although the compensable injury is a bilateral lunotriquetral tear, there was only the report of one arthrogram in evidence and this does not identify which wrist was being radiographed. The Carpal Instability paragraph of the AMA Guides defines an IR for this condition in terms of the wrist. Wrist impairment (not involving nerve loss) is further defined in the AMA Guides in terms of function or motor loss. As we stated in Appeal No. 982333, *supra*, "the AMA Guides in this case do not provide for a diagnosis-related component of an IR. Thus, the claimant was not entitled to an IR solely by virtue of the lunotriquetrial tear."

The purpose of our remand was to insure that Dr. L evaluated the claimant's wrist ROM as prescribed by the AMA Guides. In her letter of December 10, 1998, to the hearing officer, Dr. L elected to invalidate ROM based on lack of effort. The claimant's appeal is based on her belief that she is entitled to some IR independent of loss of ROM. As explained above, we believe that this position is not in accordance with the AMA Guides. There is thus no evidence that Dr. L failed to correctly apply the AMA Guides in this case. The hearing officer concluded that the great weight of the other medical evidence was not contrary to Dr. L's TWCC-69 of December 11, 1998. This was a factual determination for the hearing officer and, under our standard of review, we find the evidence sufficient to support this determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company 715 S.W.2d 629, 635 (Tex. 1986).

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

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Alan C. Ernst
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Thomas A. Knapp
Appeals Judge